

NO. 91-231

In The

Supreme Court of the United States

October Term, 1991

STATE OF GEORGIA,
Petitioner,

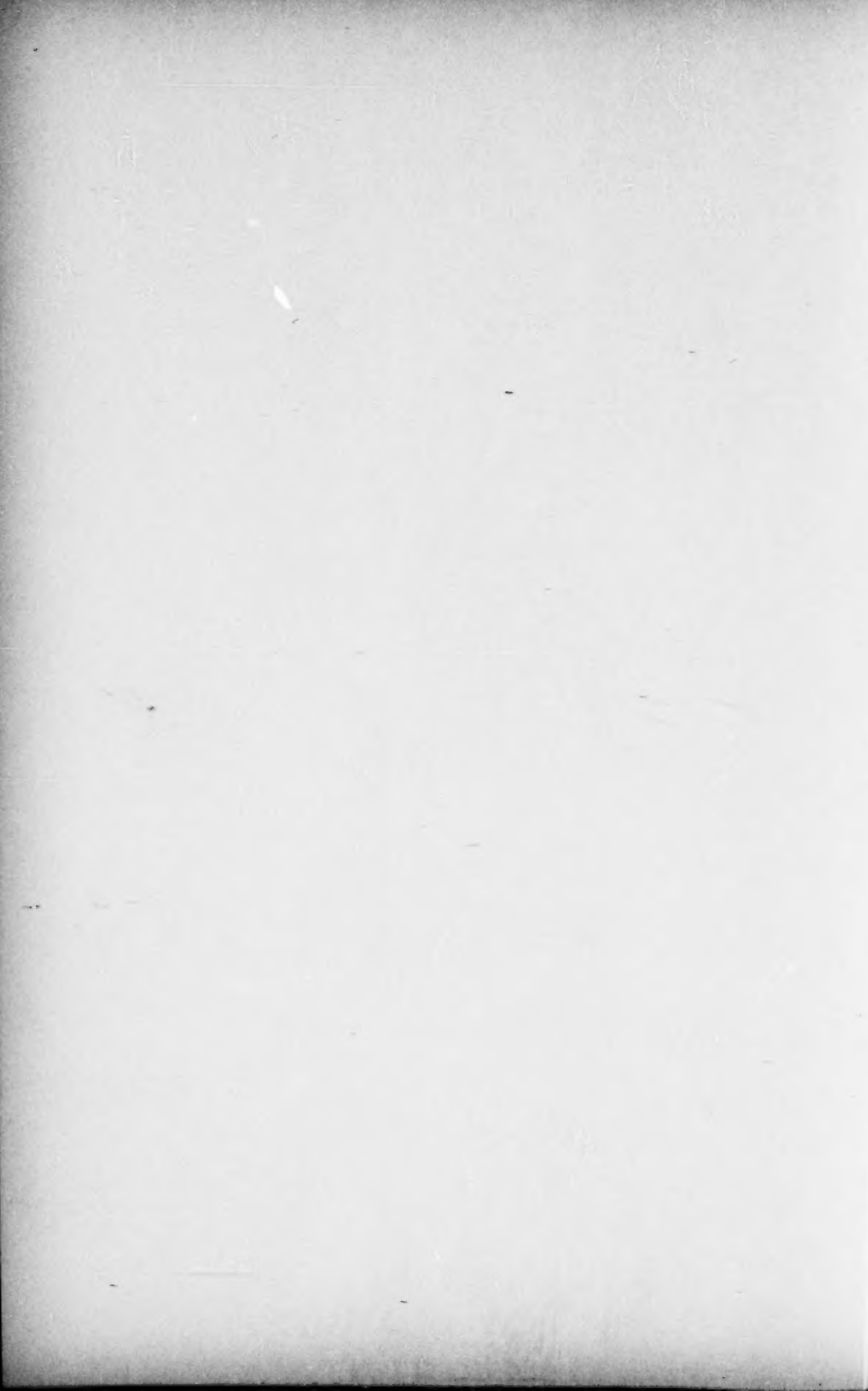
VS.

ROBERT M. WILLINGHAM, JR.,
Respondent,

On Petition For A Writ of Certiorari
To The Court of Appeals of Georgia

BRIEF FOR THE RESPONDENTS IN OPPOSITION

HARRY N. GORDON
District Attorney
325 E. Washington St.
Room 500
Athens, Georgia 30601
(404) 354-2820



QUESTIONS PRESENTED

I. THE POLICE OFFICERS ACTED REASONABLY AND IN GOOD FAITH IN OBTAINING THE FIRST SEARCH WARRANT AND ALL SUBSEQUENT SEARCH WARRANTS.

II. ALL SUBSEQUENT SEARCHES TO THE FIRST SEARCH CORRECTLY RELIED AT LEAST DERIVATIVELY UPON THE FIRST SEARCH AND SHOULD NOT BE EXCLUDED AS FRUIT OF THE POISONOUS TREE.

III. THE INITIAL TWO SEARCHES WERE NOT GENERAL SEARCHES, AND THE FIVE INTERRELATED SEARCHES DID NOT CONSTITUTE A SINGLE GENERAL SEARCH.



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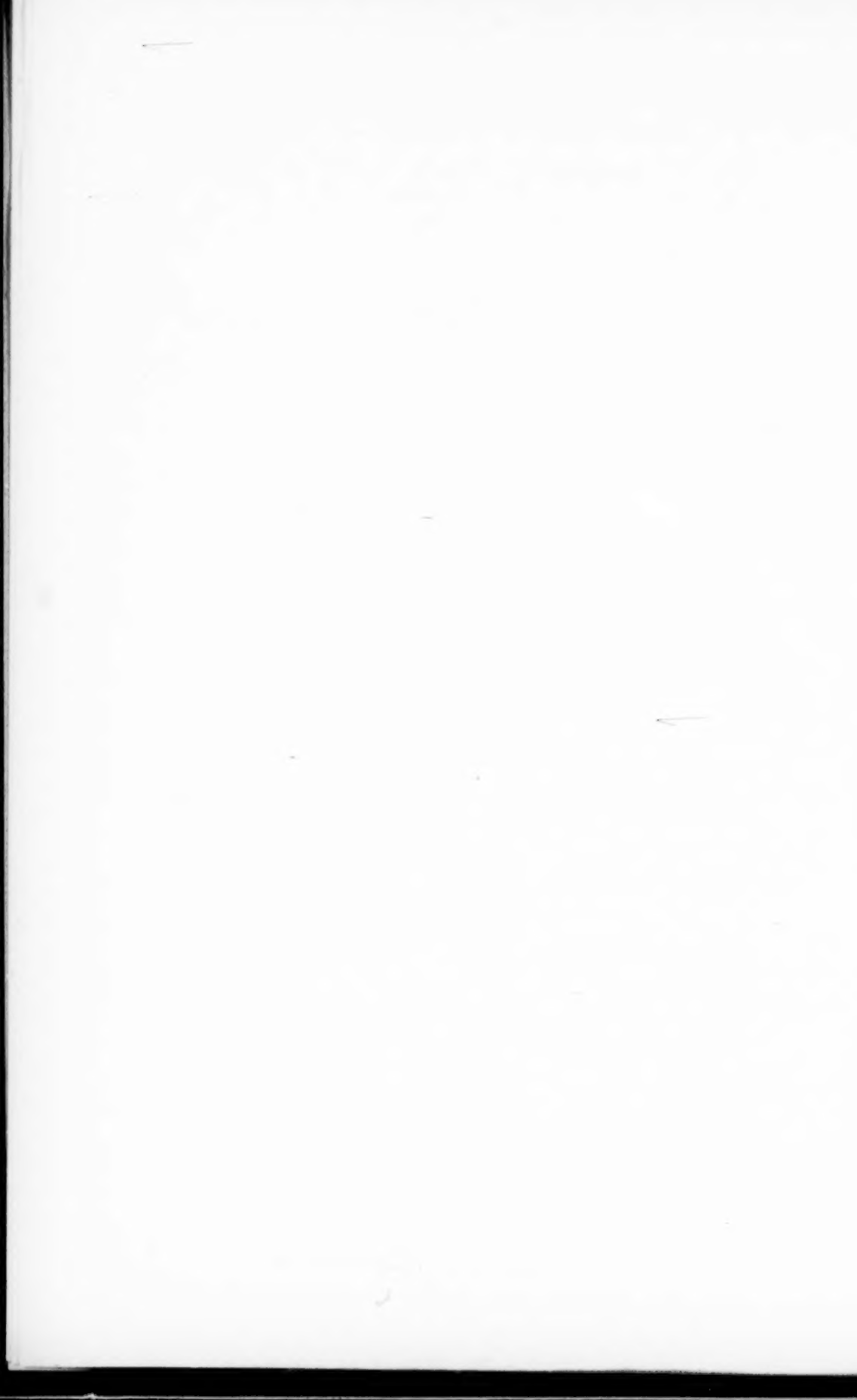
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SUMMARY OF FACTS

On October 7, 1985, the University of Georgia Main Library reported a theft by taking incident to the University police. (Vol. V, T-708, 711; Vol. VI, T-827). Mr. Thomas Camden, head of special collections, had been informed by a rare book dealer, Mr. Joseph Rubinfine of Pennsylvania, that he had in his possession a manuscript belonging to the University. (Vol. V, T-727; Vol. VI, T-811-812). The manuscript was a 1783 letter written by Nathaniel Greene. Mr. Camden, confirmed that the manuscript was indeed University property. (Vol. V, T-727; Vol. VI, T-812). Mr. Rubinfine had received the Greene letter from Mr. David Wilding of Florida. (Vol. V, T-724). Mr. Wilding was a seller representing Mr. Thomas Monroe of Atlanta. (Vol. V, T-710, 734-6). Mr. Monroe had received the letter from Mr.



Harvey Dan Abrams, a dealer in Atlanta. (Vol. V, T-711, 734-6; Vol. VI, T-854-6, 859). Mr. Abrams, a past business associate with the University library (Vol. VIII, T-1148; Vol. IX, T-1365), admitted that he had received the letter from Appellant Robert "Skeet" Willingham. (Vol. IX, T-1402). Mr. Willingham was an employee of the University of Georgia Main Library and had been "acting" head of the special collections department, which housed rare books, maps, and manuscripts. (Vol. VI, T-840). Part of this chain of custody is reflected in other similar "theft by taking" transactions to be detailed infra. The Nathaniel Greene letter was sent back through the chain of custody and the University was in receipt of it. (Vol. V, T-728, 735; Vol. VI, T-860; Vol. IX, T-1403).

On July 23, 1986, the University of Georgia police were notified of possible



thefts of rare maps from the special collections department of the Main Library. (Exhibit A). The police were given a list of items missing from a portion of the map inventory. (Vol. VII, T-1045-6). It was found that there was a ten percent loss of map inventory. (Vol. IV, T-672).

An earlier May inventory for the fiscal year 1984-1985 had been performed by Willingham, which was purportedly finished in 1 1/2 days, and which showed no missing maps. (Vol. XII, T-1964, 1982-4). During his interview with police in August, Appellant stated that he knew about the theft of the map in question, but that he did not take it nor did he know who did. (Vol. VII, T-1060). At this interview, Willingham was read his rights, stated that he understood his rights, and agreed to talk with the police. (Vol. VII, T-1054-5). Willingham, a private collector of rare



books and maps himself, was very nervous and changed his story on occasion. (Vol. VI, T-905).

Beginning in September, 1986, several other maps were found to be missing. Prices of rare maps of the same description were published in a sales catalog of dealer W. Graham Arader, III. Mr. Arader had subsequently been in contact with the library. (Vol. VII, T-1016, 1018-9).

By October, 1986, Mr. Camden became aware that the University library was missing a very valuable eight volume set of "Redoute's Lilies," a collection of botanical plates. (Vol. VI, T-957-8). Mr. Arader, informed Mr. Camden that Willingham had sold an eight volume set to Dr. Lawrence Alligood through dealer Harvey Dan Abrams of Atlanta and that Arader suspected they were University of Georgia property. (Vol. VII, T-1016, 1018-9; Vol. IX, T-1376-7). Mr.

Arader had been interested in buying the set himself. (Vol. VII, T-1009-10; Vol. VIII, T-1217, 1233). Mr. Arader had previously done business with Willingham in the past. (Vol. VII, T-1018).

On October 15, 1986, the defendant's last day of employment, University police interviewed Mr. Willingham in his office, and read his rights. (Vol. VI, T-918; Vol. VII, T-1053, 1056). On December 17, 1986, University again interviewed Mr. Willingham, this time at his home. The police again read him his rights and he stated that he understood his rights and that he would talk at that time. (Vol. VI, T-875, 877-8, 885, 898). He made ambiguous statements concerning his knowledge and the whereabouts of the Lilies and various maps. He also stated that he had forgotten about his business transactions with Mr. Arader. He said that he did sell a set of Redoute's



Lilies, which allegedly belonged to a deceased relative, to Dr. Lawrence Alligood of Carrollton, Georgia. (Vol. VI, T-875, 879, 886). Admitting that he was a suspect, Willingham did not have any proof that he had received the set of Lilies from a deceased relative. (Vol. VI, T-880, 886, 900, 911, 920, 928; Vol. VII, T-1036, 1061). He concluded the interview by stating that he wanted to talk to his attorney. (Vol. VI, T-872, 875, 879, 906, 931).

Dr. Alligood made arrangements for the purchase from Harvey Dan Abrams, the aforementioned dealer in Atlanta, who was selling The Lilies for someone else. (Vol. VIII, T-1215). Abrams, who regularly made appraisals for the defendant on items of rarity at the University Library, contacted Dr. Alligood about the purchase. The agreed pay arrangement would be for a total selling

price of \$54,000 cash, with one payment of \$27,000 immediately and the second payment of \$27,000 at the end of the year. (Vol. VIII, T-1218-9). Approximately six months later, Abrams contacted Alligood and stated that the owner wanted the remaining \$27,000 then. (Vol. VIII, T-1220). Alligood, supposing that the owner was in need of cash (Vol. VIII, T-1235-6), replied that he could not pay \$27,000 earlier than had been agreed upon, but that he could arrange a payment of \$13,000, only if he met the owner. Abrams agreed and arranged the meeting. At the meeting, Abrams introduced Alligood to Skeet Willingham as the owner. (Vol. VIII, T-1222-4, 1236; Vol. IX, T-1355). Willingham took the cash. No receipt was given. (Vol. VIII, T-1222).

Dr. Alligood, as a private collector, kept two of the plates and two volumes from the eight volume Redoute's Lilies for his



personal use, and placed the remaining six volumes on consignment with David S. Ramus, an Atlanta art dealer. (Vol. VII, T-996; Vol. VIII, T-1240). After a short period of time (Vol. VIII, T-1228), Alligood requested all of the prints returned. (Vol. VIII, T-1240). The doctor sold the remaining six volumes to Thomas Monroe of Atlanta, who again resold them. (Vol. V, T-739, 777-8; Vol. VIII, T-1225-7; Vol. V, T-781). The two volumes retained by Dr. Alligood were given to the University police to determine if they were indeed University property. (Vol. VII, T-996, 1032-4; Vol. VIII, T-1247). The title page was given to Jim Kelley of the Georgia Division of Forensic Sciences for analysis. (Vol. VII, T-998-1000). Through an ultraviolet light process, Kelley was able to confirm University records of specific marks of identification. (Vol. VI, T-902-4).

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Specifically, the name, H. Jackson, which had been partially eradicated, was observed. Both former employees Susan Tate and Dr. Porter Kellam testified at trial that they had observed the name, H. Jackson, on the title page of the first volume of the Lilies during their employment at the university library. (Vol. VII, T-1074, 1096; Vol. VIII, T-1120).

On December 16, 1986, Mr. Camden of the University Library, contacted University police, again, with a list of items missing. The investigation continued that same day with University police contacting Harvey Dan Abrams, and his associate, Gary Duda. During the interview, Abrams confirmed the sale and payment arrangement of the Lilies. He also confirmed that he had received the "Nathaniel Greene Letter" from Willingham. Gary Duda retrieved from within the residence a McKenney and Hall print "John



Ross-Indian Chief," an alleged gift from Willingham. Duda relinquished the print to the University police. (Vol. VI, T-938; Vol. VII, T-1031). Abrams and Duda later stated that they had received nine other such prints from Willingham which they sold to an Atlanta attorney, Tom Linton. (Vol. VII, T-1257; Vol. IX, T-1391). Arrangements were made for relinquishment of eight of these prints to be analyzed by the Georgia Division of Forensic Sciences. (Vol. VIII, T-1258-9; Vol. X, T-1562).

Three more McKenney and Hall prints were recovered from Deanne Levison, who purchased the Indian prints from Willingham in June 14, 1985. (Vol. VIII, T-1155-8). These prints were also sent to the Georgia Crime lab for analysis. (Vol. VIII, T-1194; Vol. X, T-1564-9). An additional fourth print was bought, but was resold. (Vol. VIII, T-1159).



The McKenney and Hall prints were donated by Mrs. Alice Jacobs, of Athens, to the University Library. She was first contacted in June, 1985, by Tom Camden. Camden was working under the defendant, who was then serving as acting Director of the Rare Book section at the library. Camden told Mrs. Jacobs that someone would get back with her and the defendant, Skeet Willingham, made the second visit. He looked at the books and took what he considered valuable, and left the rest. (Vol. V, T-798). After having the volumes in his possession, he acknowledged her gift, noting that some of the prints seemed to be missing (Vol. V, T-803). Mrs. Jacobs was unaware of any prints missing when she made the donation. (Vol. V, T-799).

The books were appraised by Frank Walsh, an Atlanta dealer, in December of 1985. (Vol. V, T-800; Vol. IX, T-1317).



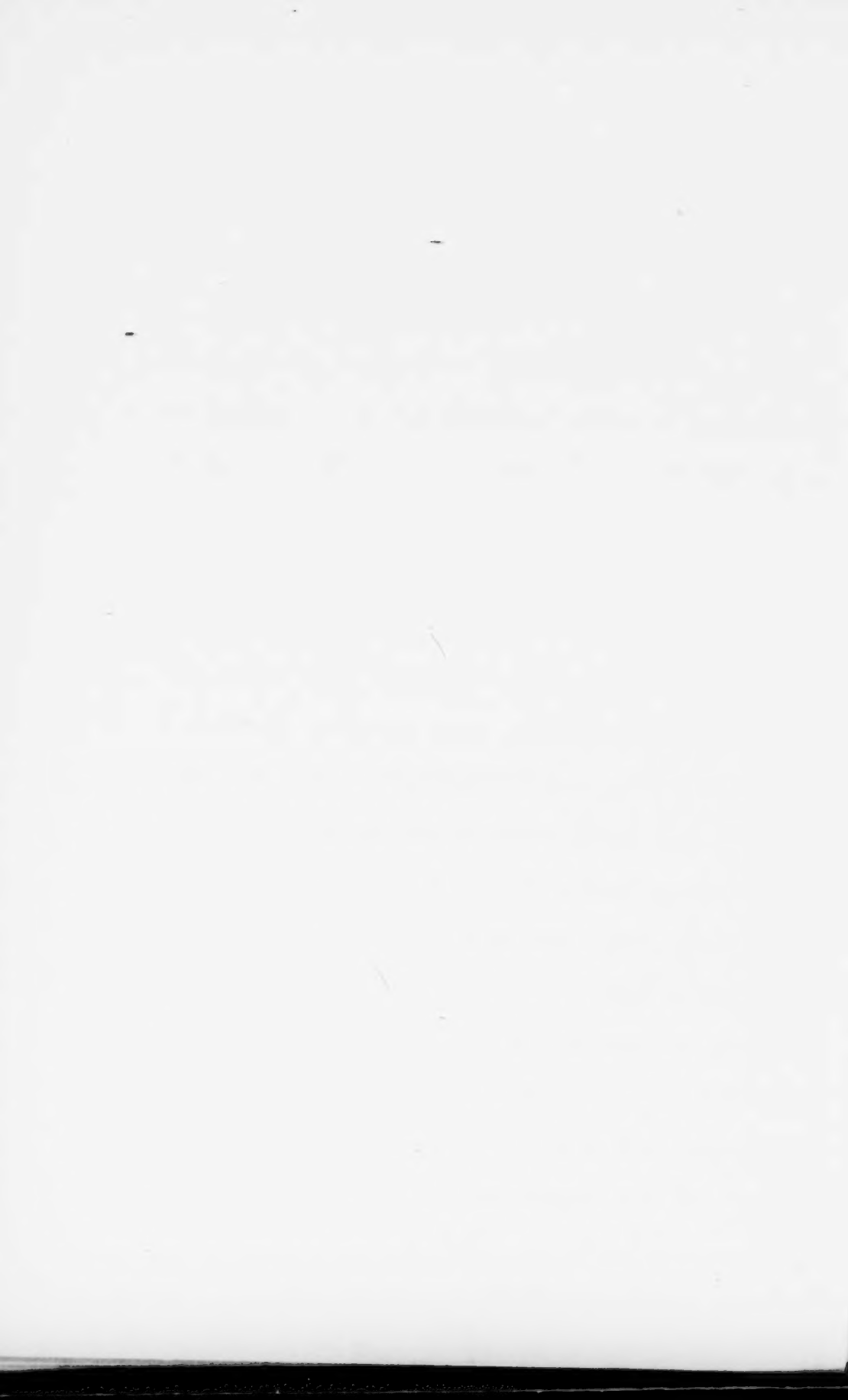
Walsh counted the prints in Vol. II. having 48 prints and Vol. III. having 24 prints. He did not have any impression that any prints were missing (Vol. IX, T-1319), and would have indicated it in the appraisal if so. (Vol. IX, T-1320-2, 1348). After a considerable period of time, Mrs. Jacobs, unhappy about the visit, called Willingham to get her books back. (Vol. V, T-800). The books were returned. (Vol. V, T-799, 805-6).

After Camden was promoted to the Director of the Rare Book Collection, Mrs. Jacobs called him and told him she wanted to give the books back. (Vol. V, T-800). In January, 1986, Camden acknowledged the 1985 gift of the McKenney and Hall prints and inventoried the prints. Vol. II. had only 36 prints and Vol. III. had 19 prints, making a total of 17 prints missing from the two books. (Vol. VII, T-1260).

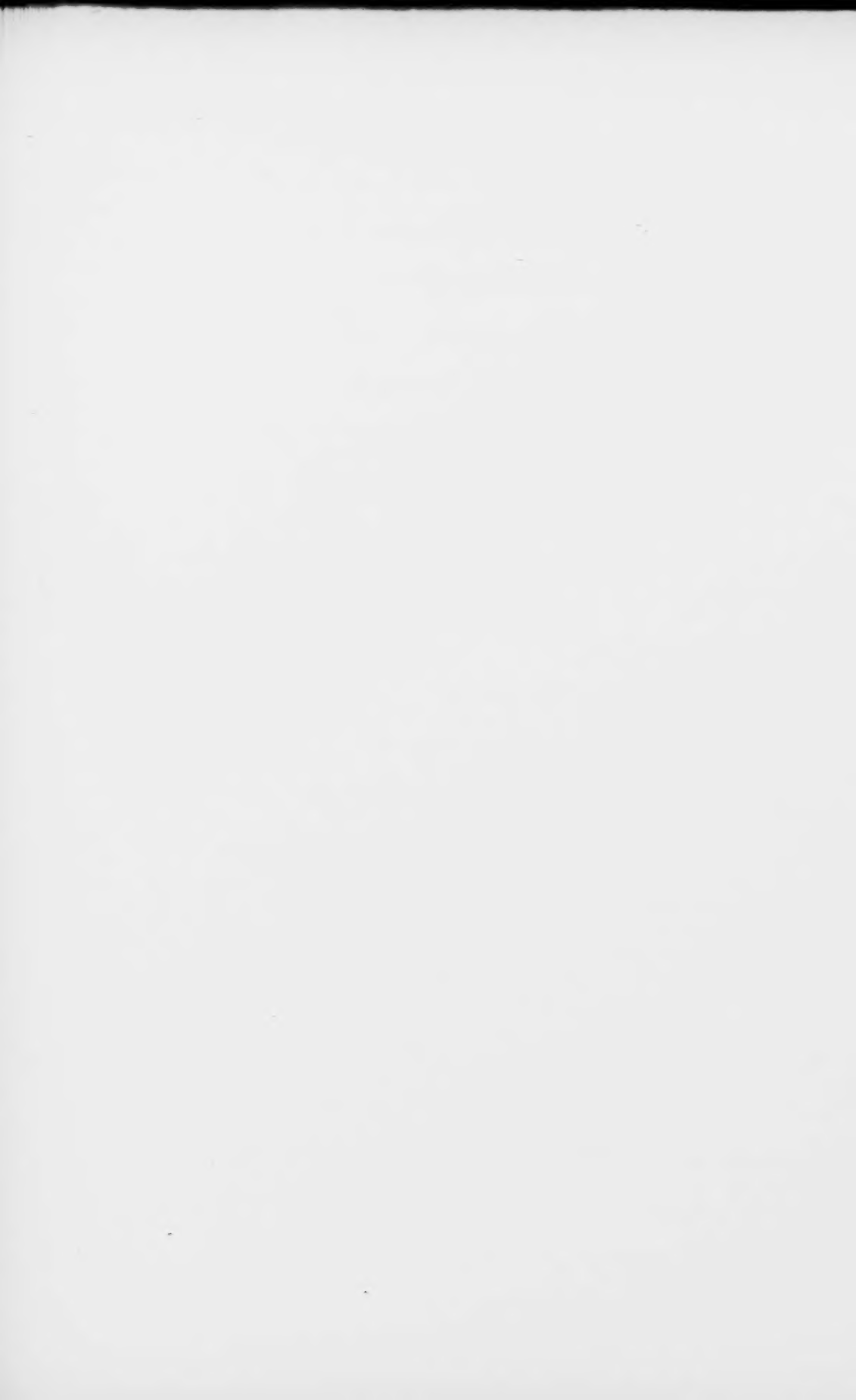


The analysis of the Georgia Division of Forensic Sciences, made by Jim Kelley, showed that the eight prints retrieved from attorney Linton and the three prints businesswoman Levison were from the McKenney and Hall volumes donated by Mrs. Jacobs to the University. (Vol. X, T-1564-9). Mrs. Jacobs identified the prints at trial as hers. (Vol. V, T-801).

Because the "Greene Letter," The Lilies, and the McKenney and Hall book all involved Willingham, and since a library inventory (Vol. XII, T-1801) indicated that there were many other missing items to which Willingham had access, an application for a search warrant was made. (A copy of the affidavit and search warrant is attached hereto as Exhibit A.) Out of an abundance of caution, the University of Georgia police officers applied for that warrant before a judge of the Superior Court of the Toombs



Circuit, surpassing the minimum requirement of authorization of a magistrate. That search warrant was executed at the defendant's residence, located in Washington, Wilkes County, Georgia, on December 22, 1986. (Vol. VII, T-1049-50; Vol. IX, T-1438; Vol. XII, T-1802). The University of Georgia police, along with a deputy sheriff of the Wilkes County Sheriff's office, were present. (Vol. IX, T-1439). Mary Ellen Brooks, a library employee, accompanied police to assist in identifying the alleged missing items (Vol. VII, T-1044-6) amidst the many maps, manuscripts, and books at the defendant's residence. (Vol. VII, T-1043-4). There were several hundreds of old books stacked in several rooms, along with a large number of maps and prints on the floors and walls in Willingham's house. (Vol. VII, T-1043, MTS [11-3-1987], 73, 146, 167-7). In



addition to his professional position in special collections at the University Library, Willingham was known to be a private collector and dealer. (Vol. XII, T-2123, MTS [Nov. 3, 1987], 180-1).

No items listed on the affidavit were seized during this search, however three unlisted items, tentatively identified as possible University property, were taken. (Vol. VII, T-1049). Photographs of items similar to those enumerated on the affidavit were taken. (Vol. XII, T-1824). These photos were of the actual rooms of where the items were found to record the location of the items received. (Vol. X, T-1775). One of the three items seized, the "Bernard Romans Map," was identified as being University property by the library card catalog number on it. The admission of the "Romans Map," however, was later suppressed in a Motion to Suppress hearing on July 30,



1988, although Judge Barrow specifically ruled that information gathered during the first search was competent evidence to use in applying for subsequent search warrants.

Consequently, using information obtained during the first search warrant, a second search warrant was issued by a Superior Court judge of the Toombs Circuit. (A copy of the affidavit and search warrant is attached hereto as Exhibit B.) That second search warrant was issued and executed at the Willingham residence on February 2, 1987, with deputies from the Wilkes County Sheriff's Department. (Vol. VIII, T-1267; Vol. IX, T-1441). Three specific items were listed in the affidavit: a map by John DeBrahm, a map by Eleazer Early, and a butterfly print by John Abbot. (Vol. VIII, T-1267; Vol. IX, T-1443).

During that search the University police took numerous pictures to aid in



identification of University property. Many items in special collections were not stamped or marked with university identification, as some past library directors of the special collections department felt that identification stamps or marks were damaging to the property. (Vol. VII, T-1090). Police officers were instructed to take pictures of the house, maps hanging on the wall, prints, and related items of antiquity. (Vol. X, T-1762). Items were stored throughout the house, stacked in closets, book shelves, and on the floor. (Vol. X, T-1762, MTS [Nov. 20, 1987], 11, 13). In order to execute the warrant in trying to find the items listed on the affidavit, police officers had to look in many places (Vol. X, T-1764) as rolled up maps and prints could be found in drawers. (MTS [Nov. 20, 1987], 14).

The "DeBrahm" and "Sturges-Early" maps were seized, but the "Abbot Chestnut



Butterfly" print, seen during the first search, was not found. (Vol. VIII, T-1268; Vol. XII, T-1814, 1816, 1830-2, 2001). The police had instructions to substantiate where items were taken from and specifically where each item was in relation to the room.

(Vol. XIV, T-2277, MTS [Nov. 3, 1987] 75-6). A police officer testified that had the "Chestnut Butterfly" print been found during the search, the officers would have left after taking photos only of what they needed for support of finding evidence in relation to the room. (MTS [Nov. 3, 1987], 122A).

The "DeBrahm Map" was identified as University property by the library card number on the back of the map. (Vol. XII, T-1863, 1905, 1914, 1936). The "Sturges-Early Map" was taken and identified by the Georgia Division of Forensic Sciences through an erasure mark on the back as that



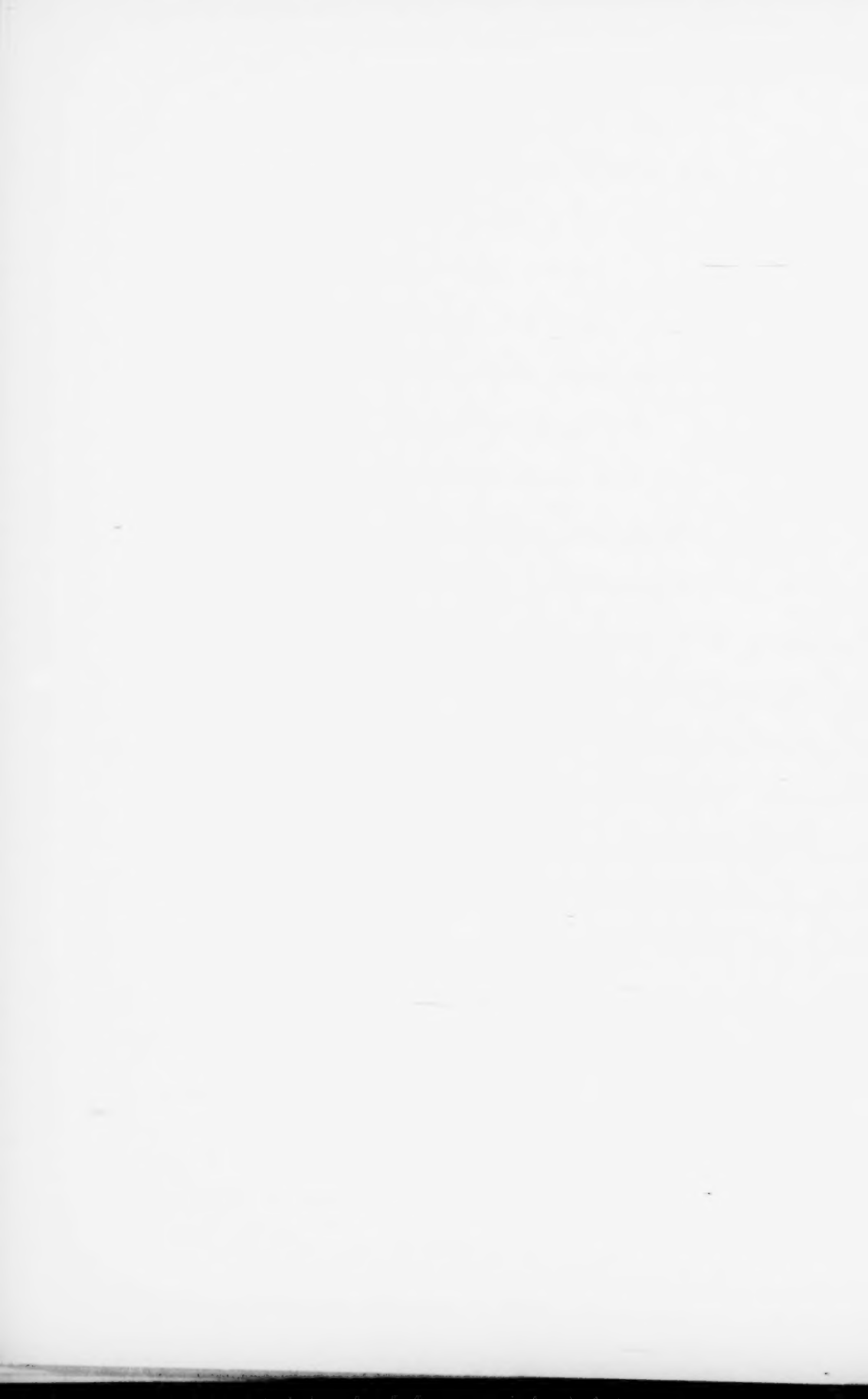
of a University property stamp. (Vol. IX, T-1444). Photographs were taken of the numerous items similar to those enumerated on the affidavit. (Vol. XII, T-1821-2).

An additional seizure took place on February 3, 1987, with the written consent of the defendant. (Vol. XII, T-1817, 1823). (A copy of the affidavit and consent to search is attached hereto as Exhibit C). Mary Ellen Brooks had discovered the "Moll Map" (marked with a university stamp and number) was missing. The "Herman Moll Map" was taken from Willingham's home and analyzed on February 6, by the Georgia Division of Forensic Sciences and found to have been cut out of an atlas owned by the University. (Vol. IX, T-1447-8).

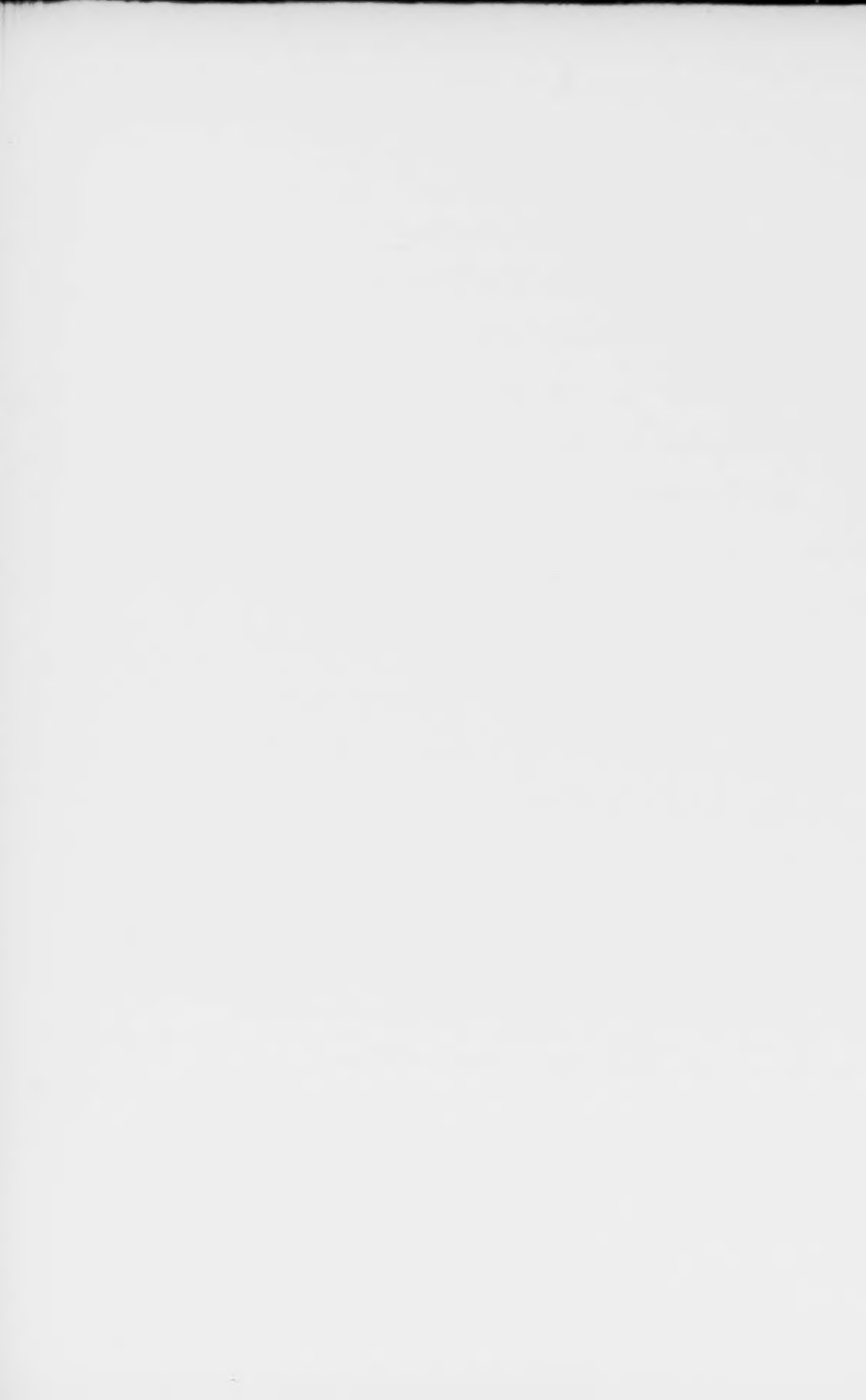
Using evidence gathered during the second search, a third search was applied for and issued by a Superior Court judge of the Toombs Circuit. (A copy of the



affidavit and search warrant is attached hereto as Exhibit D). That third search warrant was executed at the Willingham residence on February 17, 1987. (Vol. XII, T-1818). Eleven maps were seized. (Vol. XII, T-1819). In this seizure, the "Bowen Map" was taken and sent to the Georgia Division of Forensic Sciences for analysis. The map was identified as University property on February 19, 1987, by a University Library stamp on the map. Also seized were the "Saltzburg Map of Savannah" and the "Carey Map." Both were identified as University property by Jim Kelley of the Georgia Division of Forensic Sciences. (Vol. X, T-1587). The "Saltzburg Map" was identified as coming from a book which was still in possession of the University Library, and the "Carey Map" was identified as University property by a partially eradicated official University Library stamp on the back. (Vol. X, T-1587).



A fourth and final search warrant was executed at the Willingham residence on March 30, 1987. (Vol. VII, T-1271; Vol. XII, T-1820). (A copy of the affidavit and search warrant is attached hereto as Exhibit E). Three items were known to be taken, a lithograph of Stone Mountain, an issue of the Hancock Advertiser, dated October 13, 1826, and a Georgia Railroad and Banking Stock Certificate. (Vol. VIII, T-1271-3). The Georgia Division of Forensic Sciences verified that the lithograph taken from the Willingham residence was the same as that depicted in a negative of the lithograph on file at the University. (Vol. X, T-1494). The Georgia Division of Forensic Sciences verified the Hancock Advertiser was the same as that in the microfilm records at the University Library. (Vol. X, T-1597). Handwriting analysis indicated that there was a match on the Georgia Railroad and



Banking Company Stock certificates and other stock certificates at the Library.

Tom Camden notified the University police in July of 1987 that he had been contacted by Richard Harwell, past director of the Library. Harwell had seen three lithographs at an antique shop in Washington, Georgia, and thought it was possible that they were University property. University police went to the antique shop and the owner, Pamela Eaton, stated that she took these lithographs on consignment from Skeet Willingham. (Vol. XII, T-1917). One of the lithographs, "Lee and His Generals" was sent to the Georgia Division of Forensic Sciences and was matched with the University Library's photographic records. (Vol. X, T-1494, 1598).

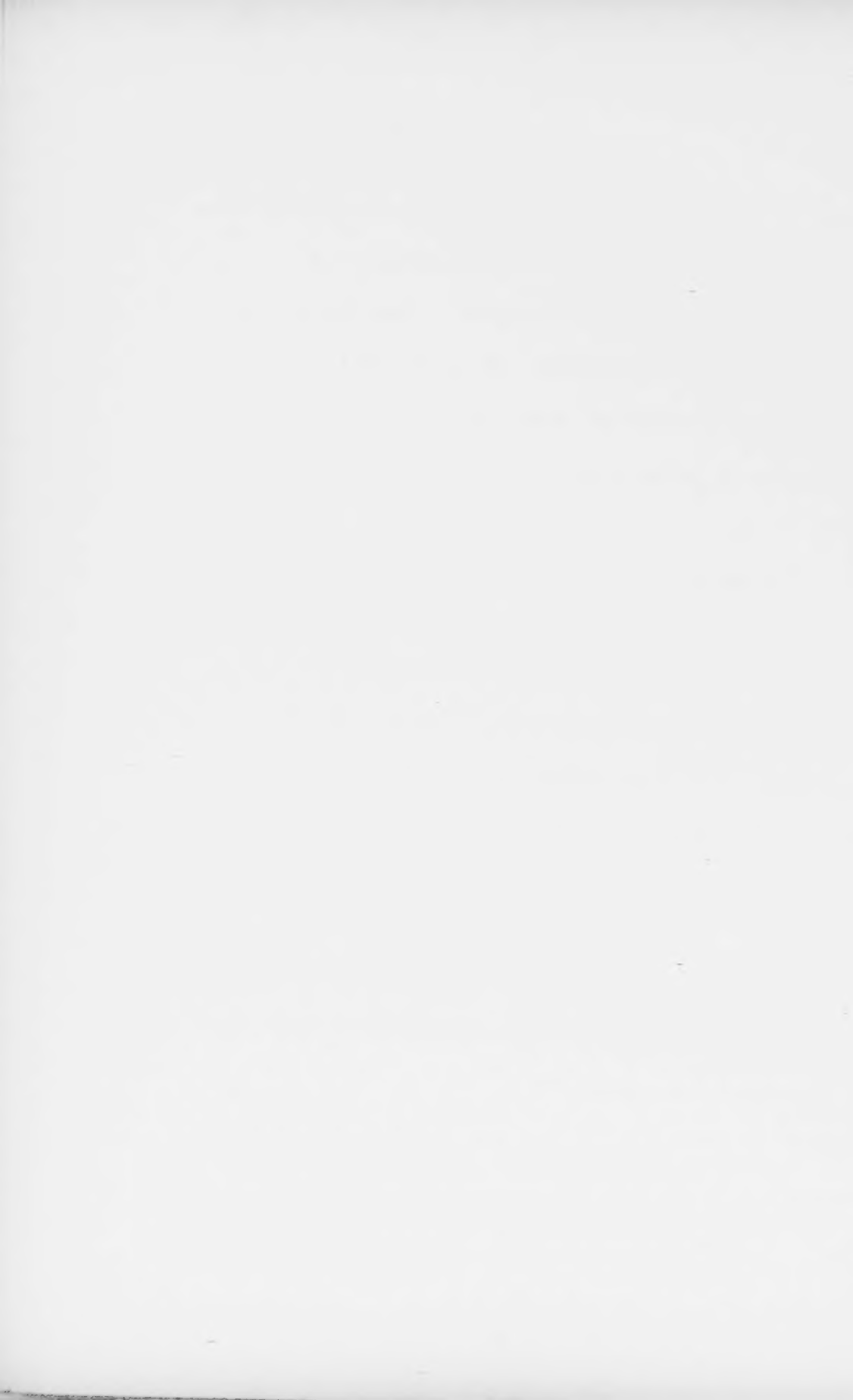
At the close of this investigation, Robert "Skeet" Willingham, was arrested and indicted on fifteen counts of theft by

conversion. One count was dropped prior to trial due to the inadmissibility of a seizure on the first search. The trial jury acquitted the defendant on a second count, regarding a book of Admiral John A. Dahlgren's Orders.

REASONS FOR NOT GRANTING THE WRIT

I. THE POLICE OFFICERS ACTED
REASONABLY AND IN GOOD FAITH
IN OBTAINING THE FIRST SEARCH
WARRANT AND ALL SUBSEQUENT
SEARCH WARRANTS.

This court has long had an abhorrence for applying the Exclusionary Rule when the police act in good faith and rely on the legal accumen of the magistrate before which they applied for their warrant, Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254



(1975), Stone v. Powell, 428 U.S. 540, 96 S. Ct. 3037 (1976), U.S. v. Calandra, 414 U.S. 338, 94 S. Ct. 613 (1974), U.S. v. Janis, 428 U.S. 457, 96 S. Ct. 3021 (1976).

This reasoning eventually led to the landmark decision handed down in U.S. v. Leon, 468 U.S. 897, 104 S. Ct. 3405 (1984) and Massachusetts v. Sheppard, 468 U.S. 981, 104 S. Ct. 3424 (1984)

- A. The officers acted in Good faith and reasonably in supplying the issuing magistrate with information to obtain the first search warrant.

Appellant repeatedly, in his argument, avers that no inventory was performed, however in his statement of facts, Appellant merely says no complete inventory was performed. (Appellant's Brief p. 5).



Appellant, himself, had performed a complete inventory of the map collection and reported results in the annual report. (T. p. 1964 L. 2-7 & 1.23 & 24). When it became apparent that items from special collections were missing a complete map inventory was begun in August, 1986. (T. p. 1965 L. 7-14). It showed approximately 10% of the map collection was missing. (T. p. 672 1.9-17). Based on that inventory which was ongoing in December, 1986, the library personnel and police were sure certain items were missing, although they could not be sure of a total number. (T. p. 1045-1046 & 1801 1.9-17).

The police drew a search warrant and affidavit for Appellant's home and listed items they knew were missing from the library. The police based the affidavit on their investigation into The Lilies, the "Nathaniel Greene Letter," and the Mckenney



and Hall Indian Prints recovered from Harvey Dan Abrams and Gary Duda.

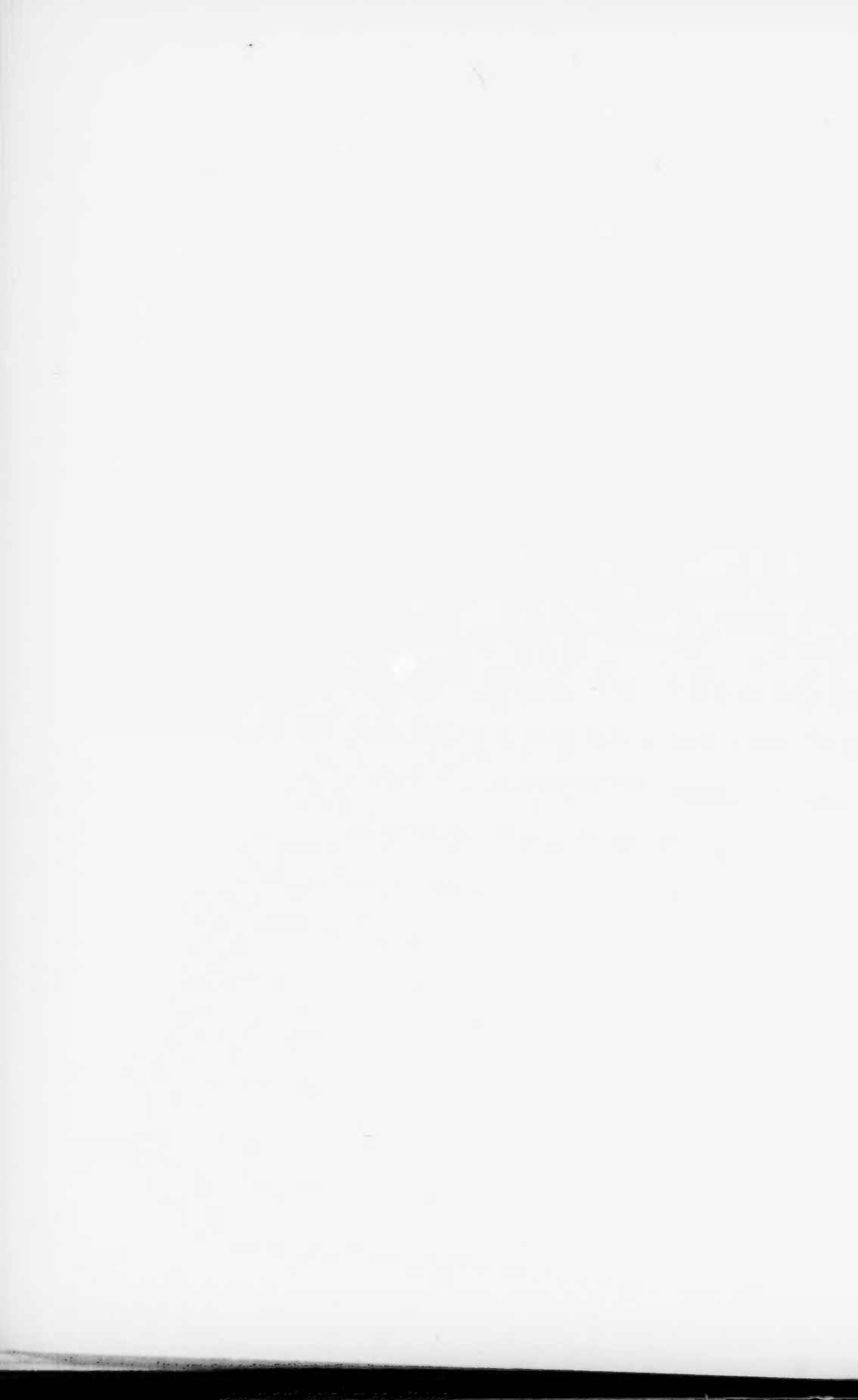
Appellant alleges that the affidavit is a bare bones affidavit because the credibility of the sources is not supported. Since the part each person played in the recovery of the items described in the warrant were fully set out, the issuing judge could draw his own conclusions as to their reliability. "Reasonable minds frequently may differ on the question whether a particular search warrant affidavit establishes probable cause, and preference for warrants is most appropriately effectuated by according great difference to a magistrate's determination." Leon, supra. Appellant specifically cites Graham Arader as someone unworthy of belief. However, Mr. Arader gave very specific information. The investigation of that information showed



that everything alleged by Mr. Arader dealing with The Lilies was true.

Taking each item individually, the police investigation had recovered enough of The Lilie volumes to identify them as University of Georgia property. They had also traced the chain of their possession back to Appellant, who, indeed, admitted selling them. The Greene Letter had been returned. Again the chain of custody ended at Appellant. The Indian prints had been recovered and once again the chain of custody ended at Appellant.

These circumstances together with the fact that special collections were missing other items authorized a magistrate to find probable cause to issue a warrant. "Where police officer's application for a warrant was supported by more than a 'bare bones' affidavit and affidavit related results of an extensive investigation and provided



sufficient evidence to create disagreement among thoughtful and competent judges as to existence of probable cause, the officers reliance on magistrate's determination of probable cause was objectively reasonable and application of extreme sanction of exclusion of evidence seized under warrant was inappropriate, notwithstanding that warrant was subsequently found deficient on ground of stale information and failure to establish informant's credibility. Leon, supra.

- B. The information in the application for the first search warrant was not too old on which to be relied.

"While it is true that timeliness of information contained in a search warrant affidavit is an important variable, probable

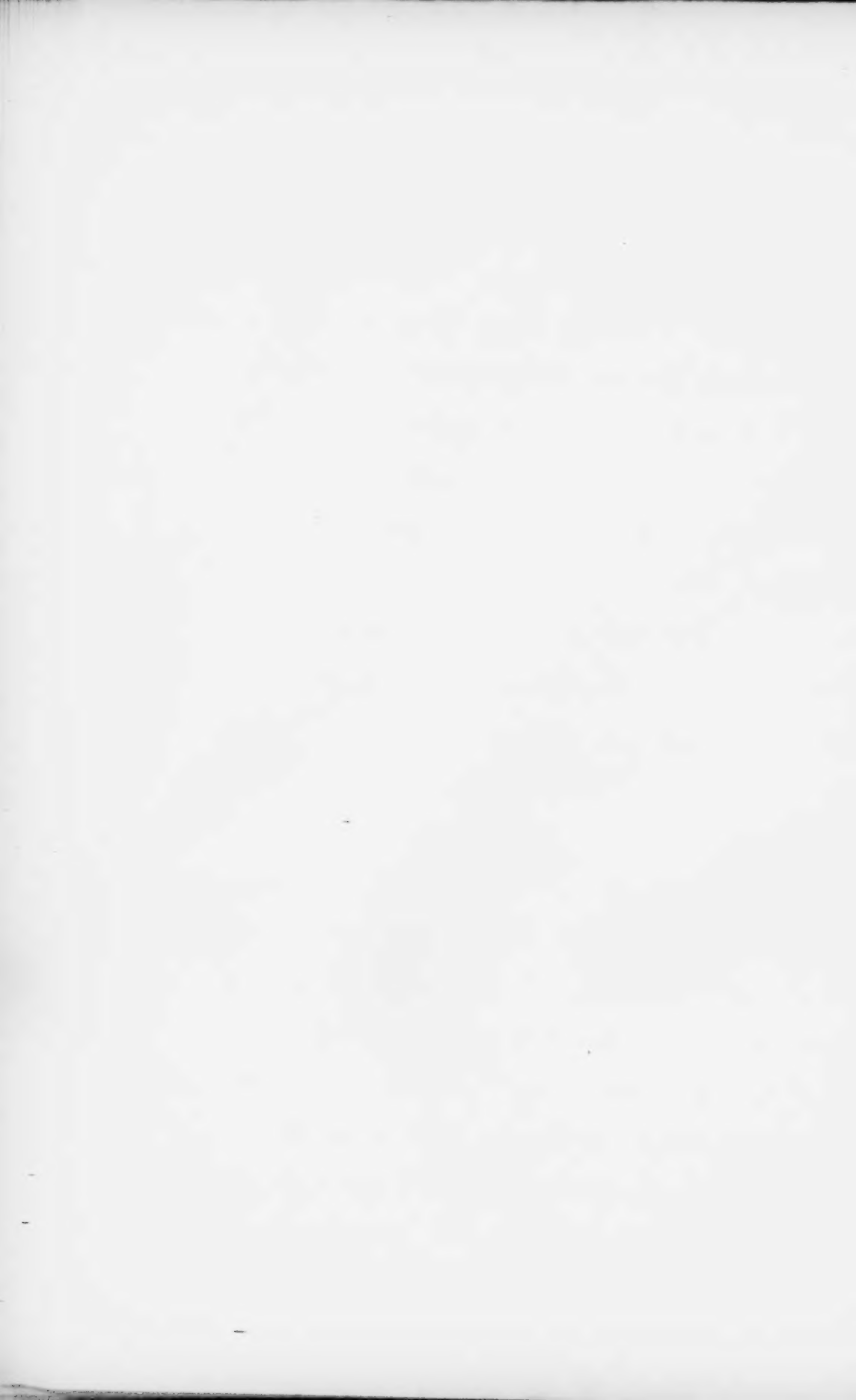
cause is not determined simply by counting number of days between facts relied on and issuance of warrant; rather, whether information is too stale to establish probable cause depends on nature of criminal activity, length of activity, and nature of property to be seized." U.S. v. Shomo, 786 F.2d 981 (10th Cir. 1986) see also U.S. v. Snow, 919 F.2d 1458 (10th Cir. 1990). ["A Georgia case has stated this point most graphically when it stated "the observation of a half-smoked marijuana cigarette in an ashtray at a cocktail party may well be stale the day after the cleaning lady has been in; the observation of the burial of a corpse in a cellar may well not be stale three decades later." Mitchell v. State, 239 Ga. 456 (1977).]

Appellant contends since The Lilies were sold in 1984 and the "Nathaniel Greene Letter" was returned in 1985, those two



instances are too old to be reliable. At least one Indian print was given to Gary Duda in May, 1986. (T. p. 1411 1.17-24). These three events taken together show a long standing pattern of criminal behavior by Appellant. "Where affidavit recites facts indicating ongoing, continuous, criminal activity, passage of time becomes less critical for purposes of determining probable cause for issuance of search warrant." Shomo, supra.

Moreover, Appellant was know to collect and deal in rare books, maps, and manuscripts which he kept in his home. Because of the very nature of these items, the right buyer for a particular item might not be readily available. It would be logical to assume that some of the items would be found in Appellant's home as part of his own collection on awaiting sale for protracted lengths of time. "Where property



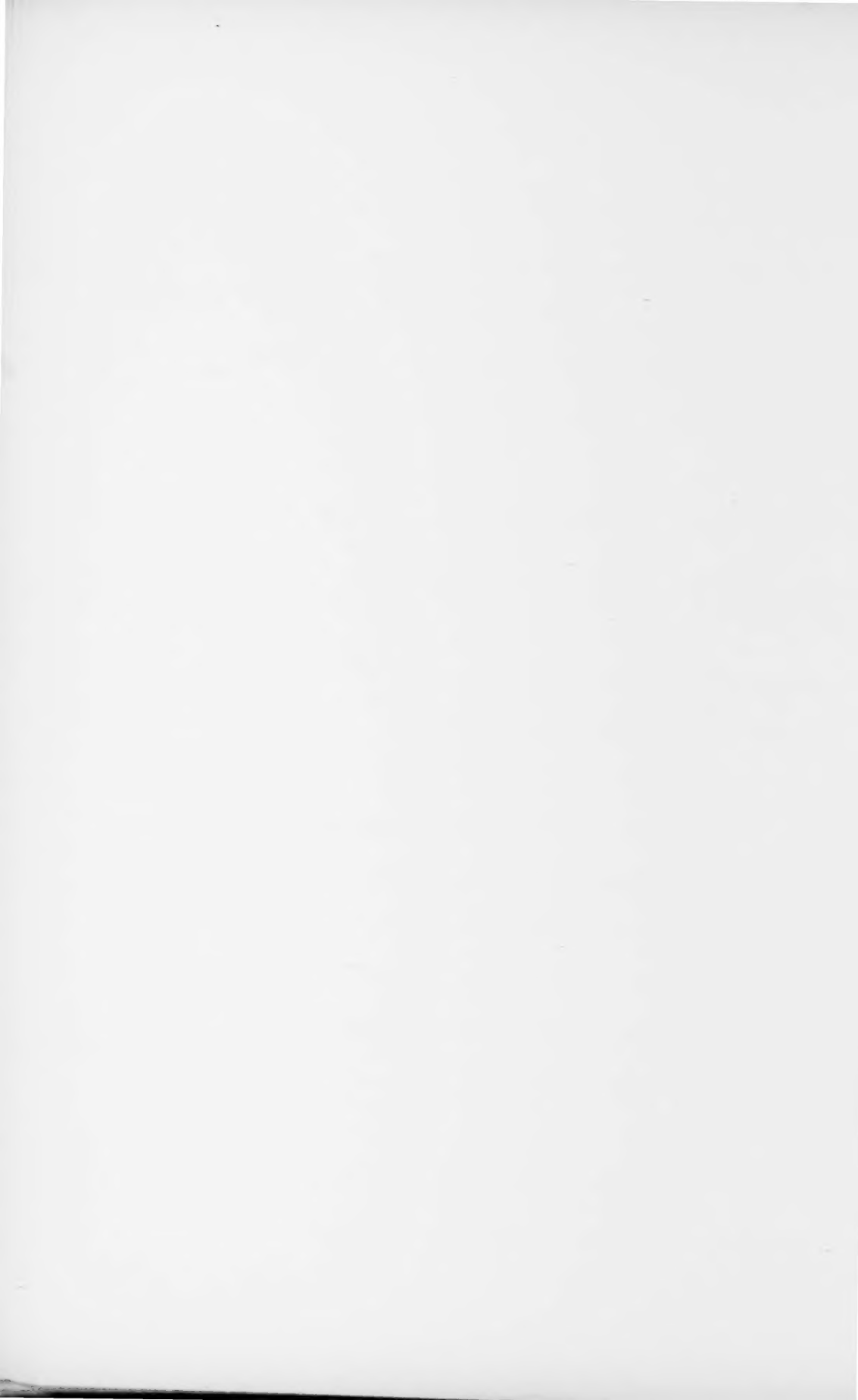
sought is likely to remain in one place for a long time, probable cause may be found even though there was substantial delay between occurrence of event relied on and issuance of warrant." Snow, supra.

C. The officers did not rely on a bare bones affidavit.

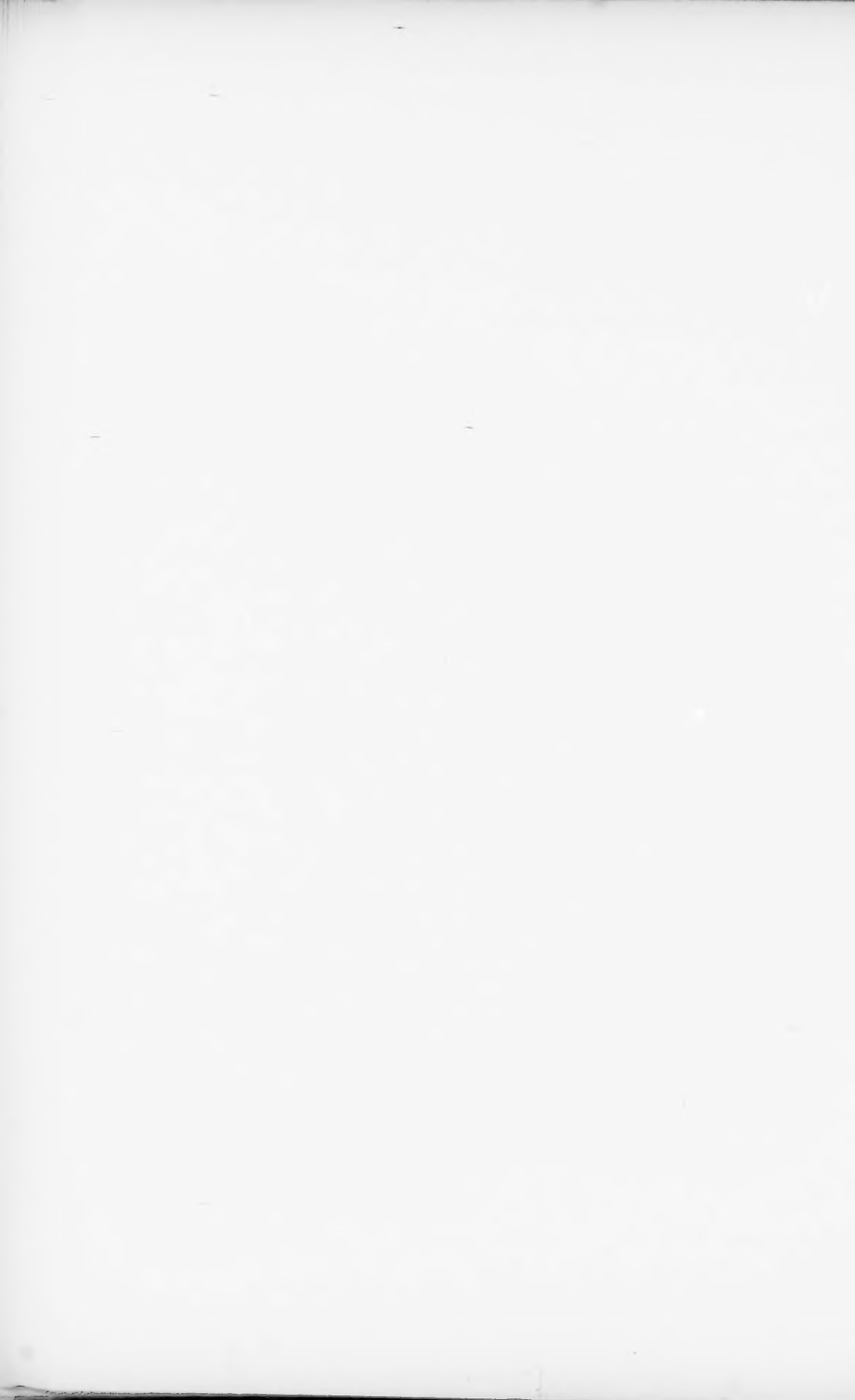
For reasons already stated, this enumeration is without merit.

II. ALL SUBSEQUENT SEARCHES TO THE FIRST SEARCH CORRECTLY RELIED AT LEAST DERIVATIVELY UPON THE FIRST SEARCH AND SHOULD NOT BE EXCLUDED AS FRUIT OF THE POISONOUS TREE.

The police officers in this case performed a complete and thorough



investigation as to each of the items they knew the whereabouts of that had been stolen from the University Library. They presented a summary of that investigation in an affidavit for a search warrant. They presented that affidavit to a judge of the Superior court out of an abundance of caution rather than a mere magistrate. That judge made a determination that a search warrant should issue. "Here, there was an objectively reasonable basis for the officers . . ." belief that the warrant authorized the search they conducted. The officers took every step that could reasonably be expected of them. At the point where the judge returned the affidavit and warrant to the detective, a reasonable police officer would have concluded, as the detective did, that the warrant authorized a search for the materials outlined in the affidavit A police officer is not



required to disbelieve a judge who has just advised him that the warrant he possesses authorizes him to conduct the search he has requested. Massachusetts v. Sheppard, 468 U.S. 981, 104 S. Ct. 3424 (1984).

Since the police were legitimately empowered to search Appellant's home, the trial court erred in suppressing the fruits of the first search. Additionally, since the officers were legally in Appellant's house they could use their observances there as probable cause for subsequent search warrant affidavits. "The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its origin and purposes makes it clear that the use fruits of a past unlawful search 'work[s] no new Fourth Amendment wrong.'" U.S. v. Calandra, 414 U.S. 338, 94 S. Ct. 613, 623 (1974).



For the above-stated reasons there is no merit to any contention made by Appellant as to his second question of law.

Both ~~this~~ question of law and Appellant's first question of law request this court to reexamine issues of law enunciated in Leon. There are no new issues presented in these two questions for this court's determination.

This is not a situation where Leon is being interpreted differently in different circuits. see U.S. v. FAMA, 758 F.2d 834 (2nd Cir. 1985); Gluck v. U.S., 771 F.2d 750 (3rd Cir. 1985); U.S. v. Owens, 848 F.2d 462 (4th Cir. 1988); U.S. v. Breckenridge, 782 F.2d 1317 (5th Cir. 1986); U.S. Bowling, 900 F.2d 926 (6th Cir. 1990); U.S. v. Hornick, 815 F.2d 1156 (7th Cir. 1987); U.S. v. Taxacher, 902 F.2d 867 (11th Cir. 1990).

For the above-stated reasons, it is respectively requested that cert be denied as to the above issues.

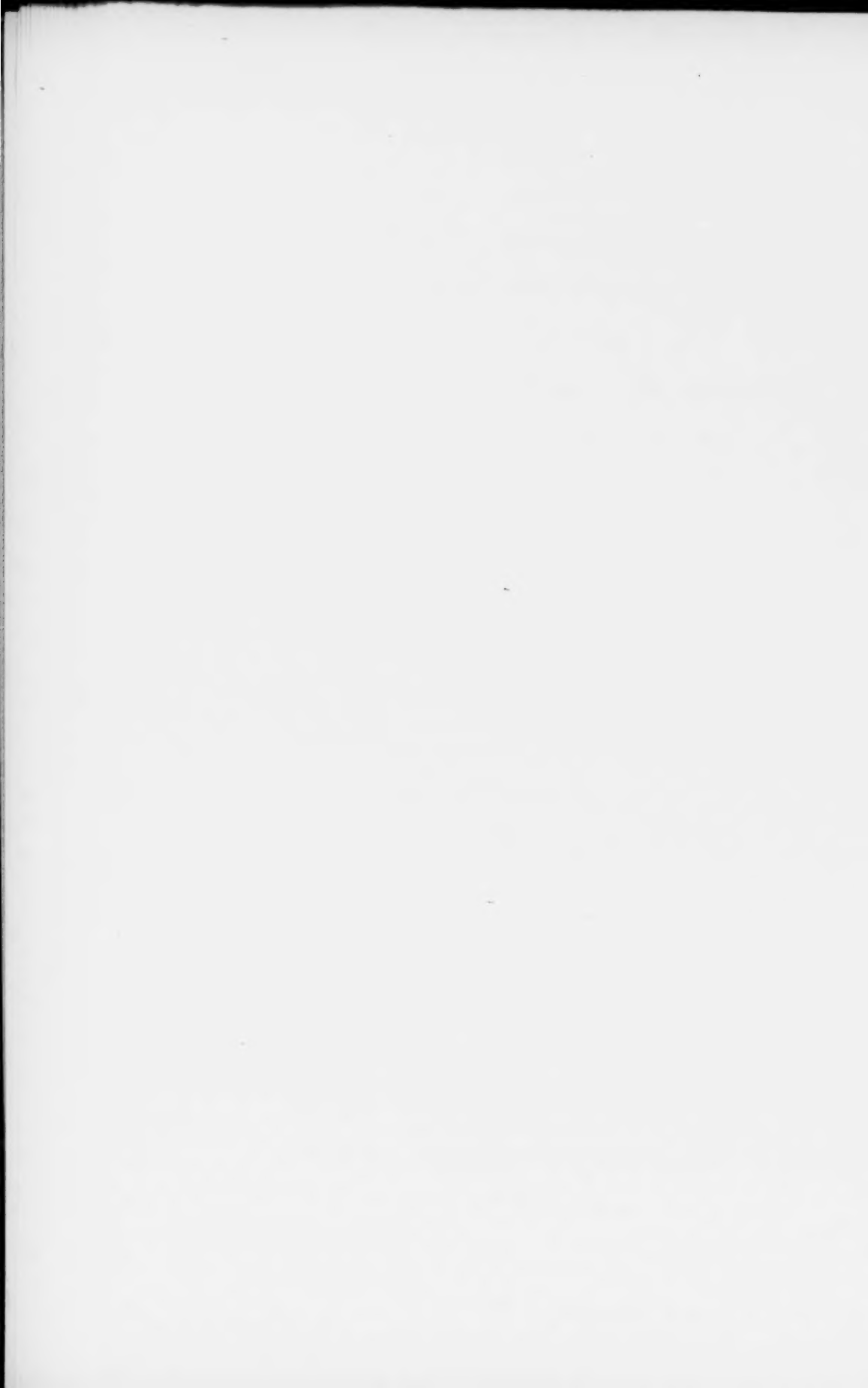


III. THE INITIAL TWO SEARCHES WERE
NOT GENERAL SEARCHES, AND THE
FIVE INTERRELATED SEARCHES
DID NOT CONSTITUTE A SINGLE
GENERAL SEARCH.

Although presented in many paragraphs and sub paragraphs, Appellant's third question of law raises only two issues. The first issue raised is whether or not the searches of Appellant's residence individually or collectively constituted a general search or searches.

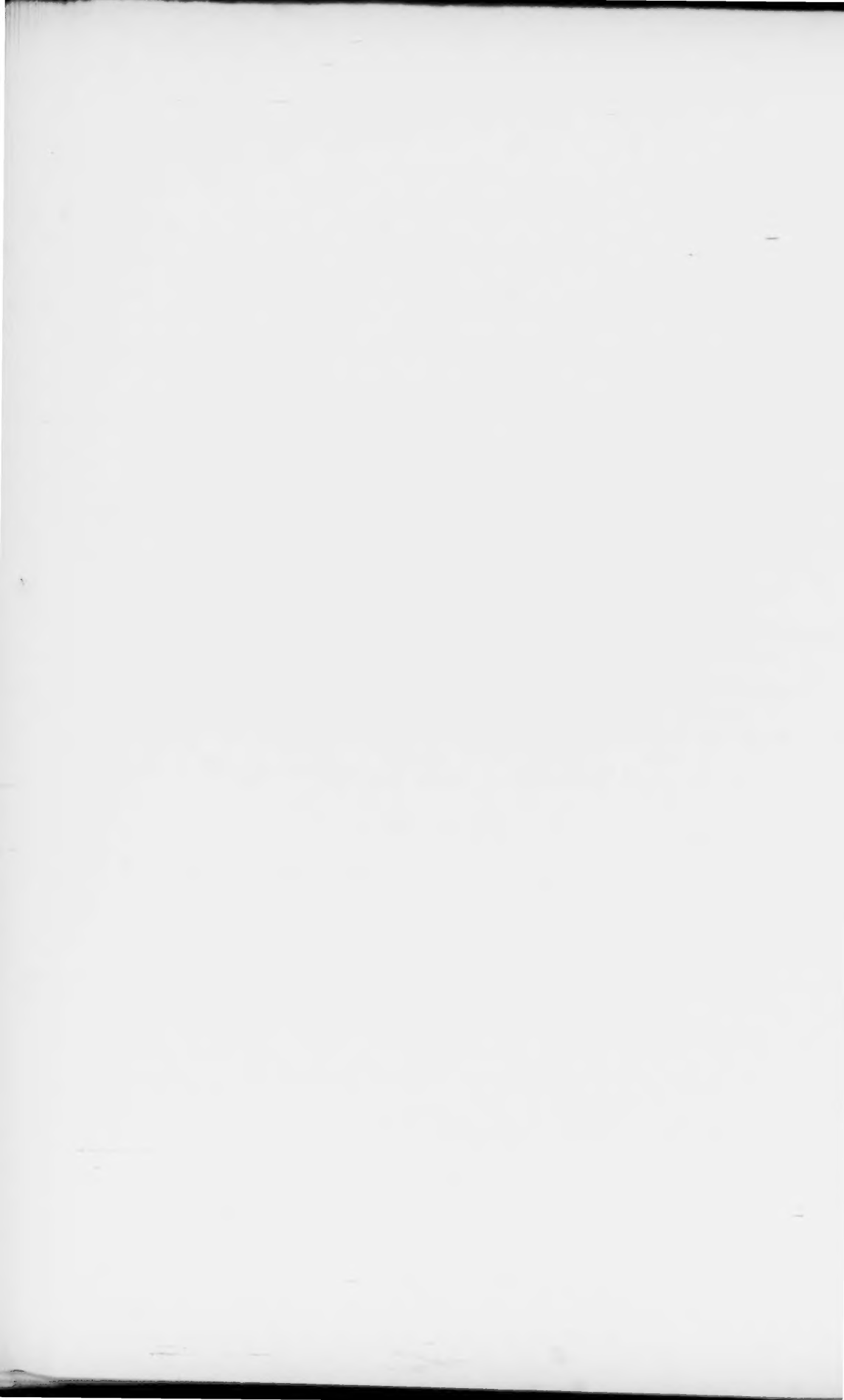
"The prohibition against general searches and warrants is based on privacy concerns, which are not implicated when an officer with a lawful right of access to an item in plain view seizes it without a warrant." Horton v. California, ____ U.S. ____, 110 S. Ct. 2301 (1990) at 2304.

In the instant case, the first search warrant listed specific items sought. Those



items were items known to be missing from the University Library, Special Collections. Each subsequent search also listed specific items sought in connection with this case. The police officers neither requested nor were granted general search power.

In order to ensure that the items seized were those sought, the police enlisted the help of a special collections employee, with expertise in the area to aid in their identification. Her name was Mary Ellen Brooks. She was involved in the ongoing inventory being done at Special Collections. (Vol. XII, T-1965). As such, she was privy to the daily discoveries of other missing items. Although none of the items sought in the first search warrant were actually found, Ms. Brooks did identify three items known to be missing from the university. "It has long been settled that



objects falling into plain view of an officer who has a right to be in a position to have that view are subject to seizure and may be introduced into evidence." Ker v. State of California, 374 U.S. 23, 83 S. Ct. 1623 (1963).

Since the limits of each search were specifically and reasonably limited in their scope to property which had a probability of being in Defendant's home, they cannot be characterized as general searches.

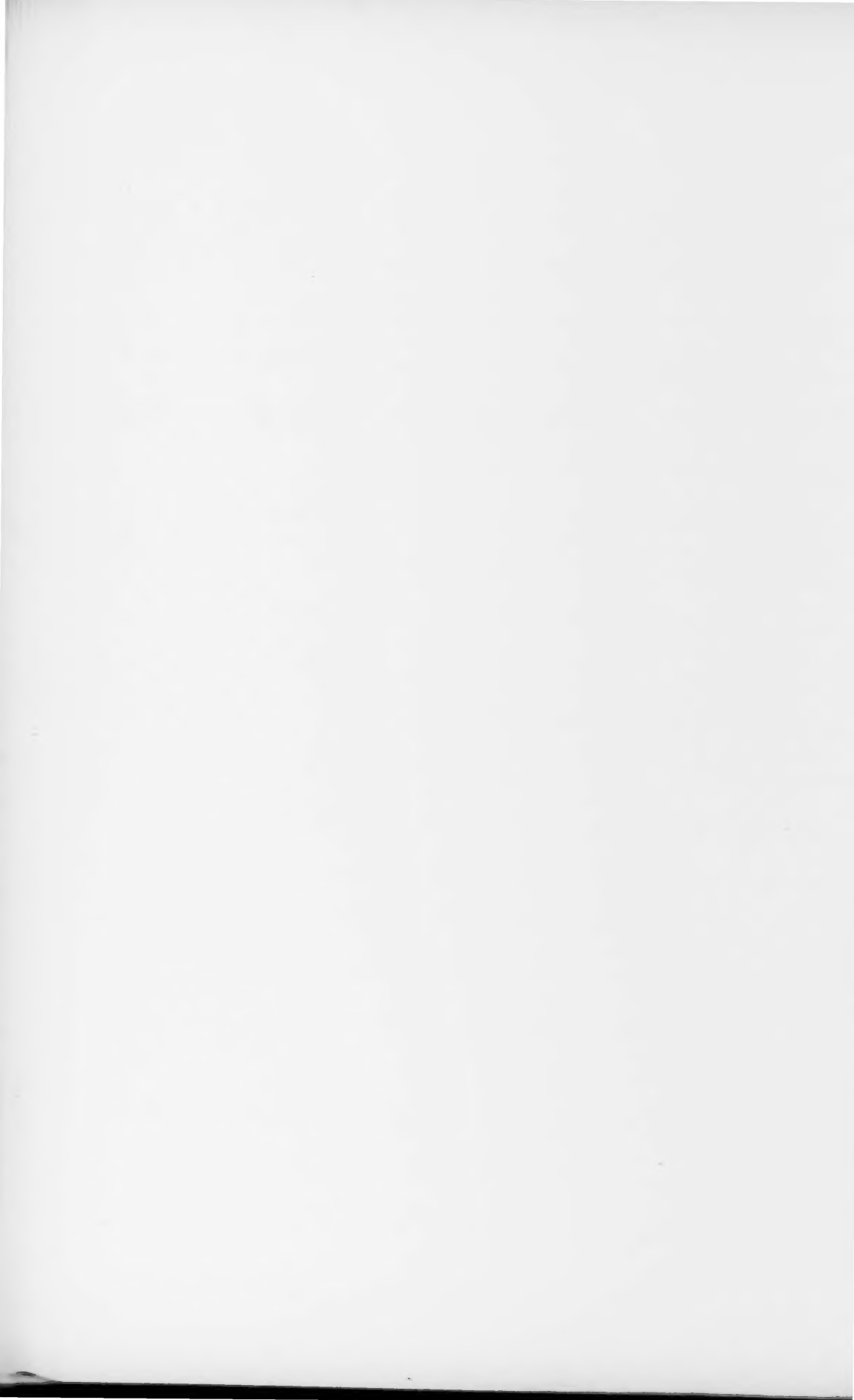
This area presents no new question of law for this court's determination or interpretation. Nor does justice require this court to modify or change the lower courts' rulings on this matter.

The second issue raised in the Appellant's third question of law concerns the taking of photographs during the searches in question. Specifically, this



issue addresses the first and second searches, where all of the pictures were taken. It is undisputed that there 257 pictures taken in the second search. In the first search, there were approximately 36 pictures taken. (MTS [Nov. 20, 1987], 37). It is interesting to note that Appellant raises no objection to the pictures taken during the first search.

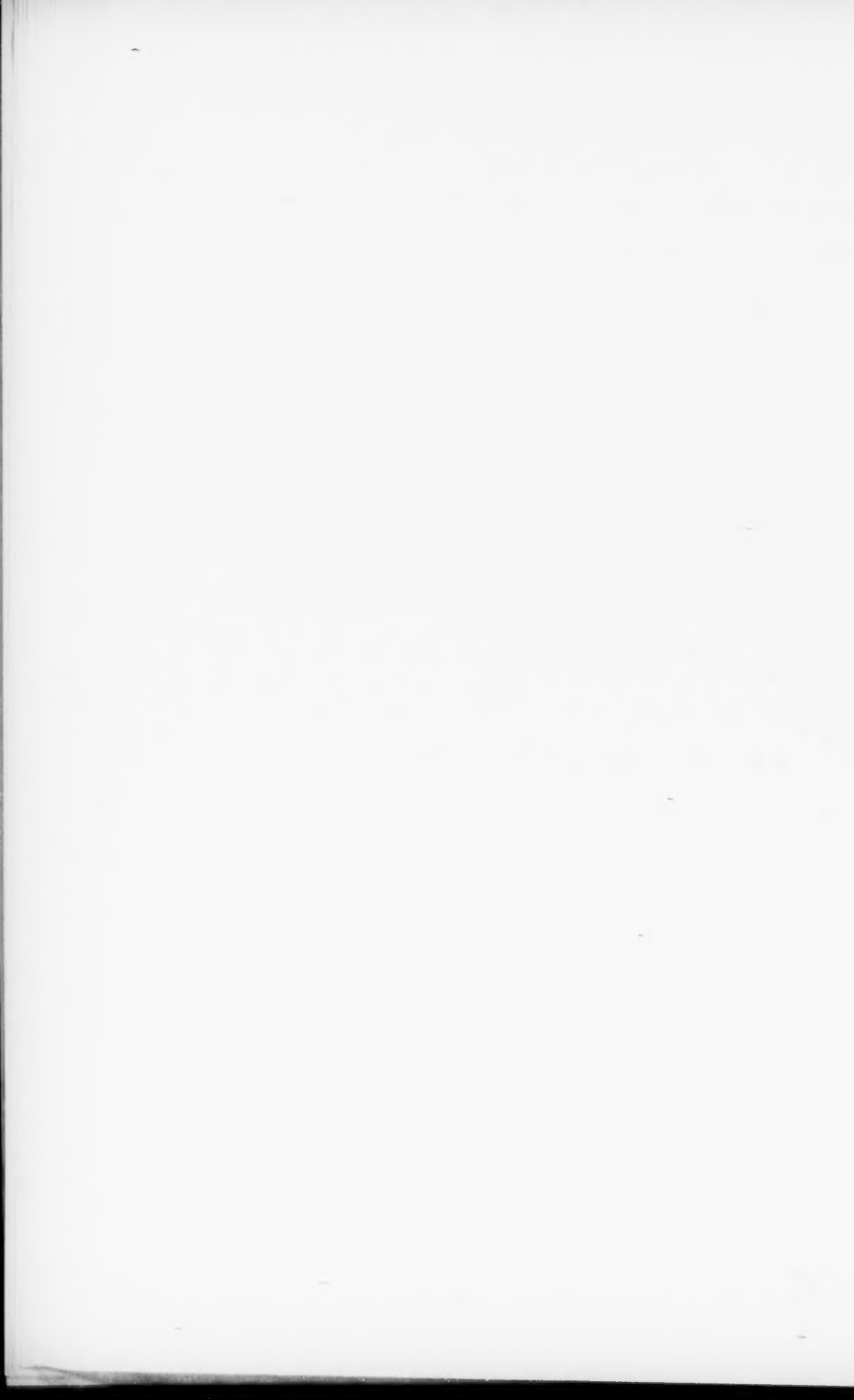
The Appellant does object to the pictures taken in the second search. Appellant, however, is misplaced in his reliance on Espinoza. U.S. v. Espinoza, 642 F.2d 153 (4th Cir. 1981). Although Espinoza holds, among other things, the taking of photographs may, under some circumstances, constitute an unreasonable seizure, the State respectfully suggests that is a misinterpretation of the facts presented in U.S. v. Johnson, 452 F.2d 1363 (DC Cir. 1971). In Johnson, during a person's



unlawful detention, his picture was taken. It is suggested that a more proper statement of the facts in that case would be that a photograph obtained as a result of an illegal seizure would require suppression.

The Horton court stated that "'search' comprises individual interest in privacy; 'seizure' deprives individual of dominion over his or her person or property." Horton v. California, ___ U.S. ___, 110 S. Ct. 2301 (1990).

Espinoza, supra., goes on to state, "It is well settled, however, that 'objects falling into plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced into evidence.' Harris v. U.S., 390 U.S. 234, 88 S. Ct. 992 (1968). The evidence in Espinoza that was introduced under that plain view doctrine were photographs depicting stacks



of explicit books and magazines, various business records, and a photograph of the business license . . ."

Although the Appellant contends that such photos should be considered as items seized, the court in Horton v. California defines "seizure" as a deprivation of an individual over the dominion of his or her personal property. The photos in the instant case did not deprive the Appellant of his possessory interest. The taking of the photos was part of the search, which the Horton court defines as a compromise of an individual interest in privacy. The court added, however, that seizure of an object in plain view does not involve intrusion on privacy. Horton, supra.

In Dow Chemical Co. v. U.S., 476 U.S. 227, 106 S. Ct. 1819 (1986), the court held "that the taking of aerial photographs of an industrial plant complex from navigable



airspace is not a search prohibited by the Fourth Amendment."

In California v. Ciraolo, 476 U.S. 207, 106 S. Ct. 1809 (1986), the court held that the Fourth Amendment was not violated by the naked-eye aerial observation of respondent's backyard, and in doing so, this court, with full knowledge that the observing officer had at the time of making his observation also photographed what he saw, implicitly equated the photograph with the naked eye view for the Fourth Amendment purposes.

In Sovereign News Co. v. U.S., 690 F.2d 569 (6th Cir. 1982),

the officers who searched the premises of Sovereign News did not open boxes containing materials not listed in the warrant nor did they peer into areas which could not have contained the specified items. The officers noted the titles of films and magazines which were in plain view during the course of their search. In addition, they took note

of other business records. The government used these notes to prepare a second search warrant. The information related to the warrant being executed and was gathered in an unobtrusive manner. Thus, the facts meet the primary requirements of the 'plain view' doctrine. Briefly, those requirements are: (a) the officer must be lawfully on the premises; (b) the incriminating nature of the evidence seized must be immediately apparent; and (c) the discovery must be inadvertent. See Coolidge v. New Hampshire, 403 U.S. 443 at 465-71, 91 S. Ct. 2022 at 2037-40 (1971).

The inadvertency requirement was of course abandoned by this court in its opinion in Horton v. California, ___ U.S. ___, 110 S. Ct. 2301 (1990).

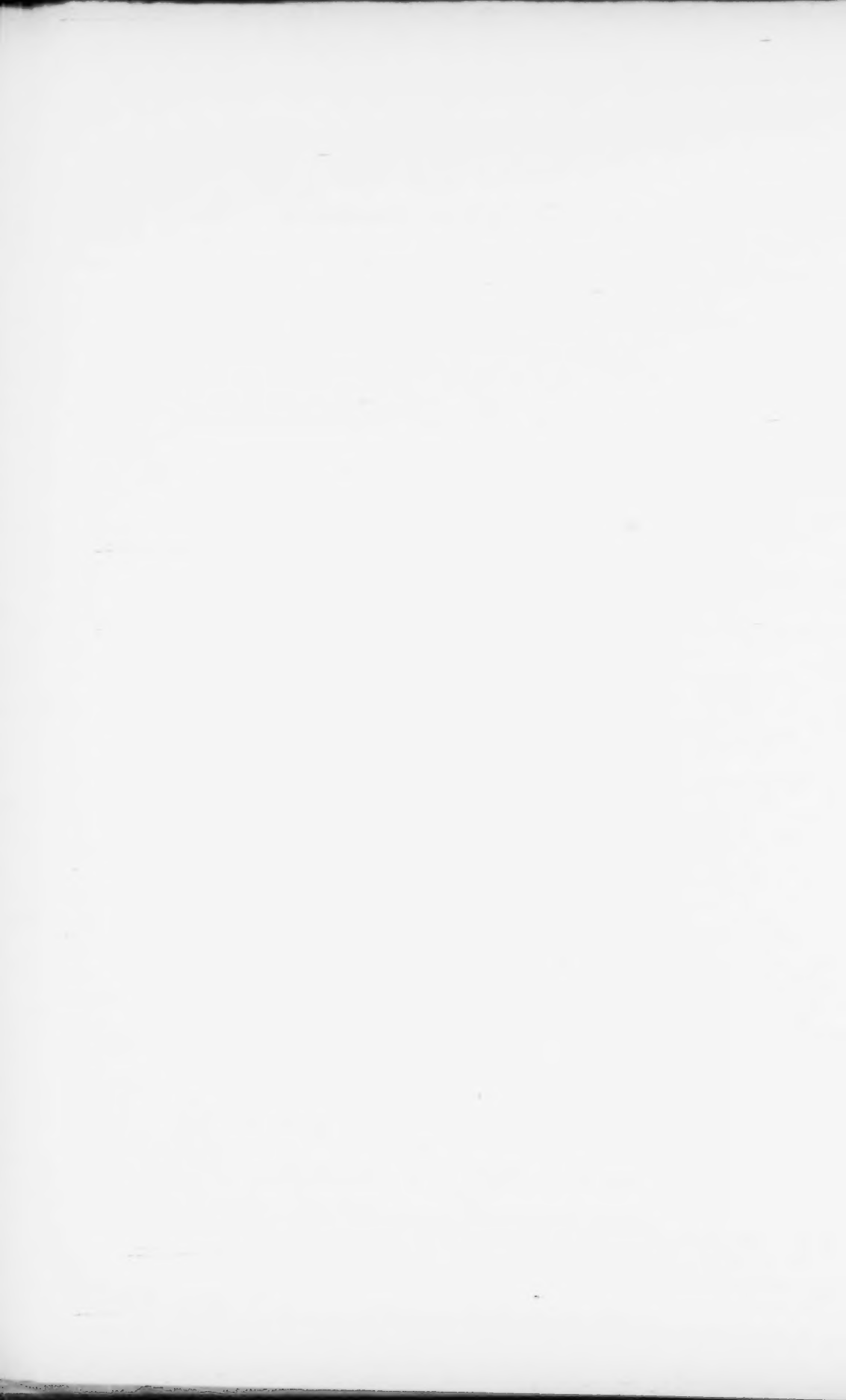
"The facts here also fit U.S. v. Espinoza. In Espinoza, agents photographed the Defendant's office and warehouse during an obscenity investigation. the court excused the 'seizure' of the agent's 'mental



images' under the plain view exception. The photographer was lawfully present on the premises; the images were evidence of criminal activity " Sovereign News Co. v. U.S., supra at 573 (citing U.S. v. Espinoza, supra, at 166-67).

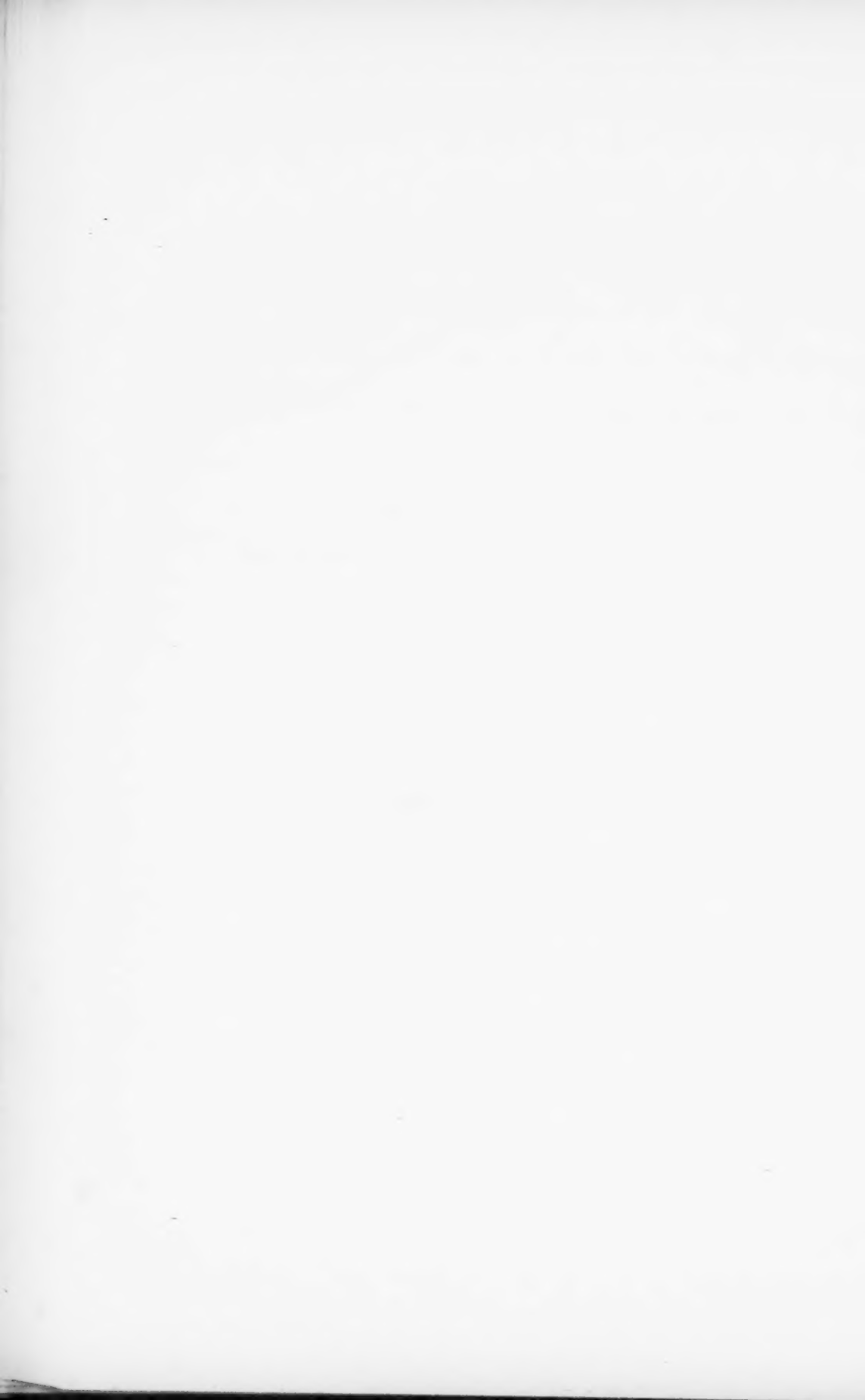
This court expressed a similar opinion in Arizona v. Hicks, regarding the recordation of serial numbers when it was held "that the mere recording of the serial numbers did not constitute a seizure." Arizona v. Hicks, 480 U.S. 321, 107 S. Ct. 1149 (1987).

This court also held that "[t]he plain-view doctrine is grounded on the proposition that once police are lawfully in a position to observe an item firsthand, its owner's privacy interest in that item is lost; the owner may retain the incidents of title and possession but not privacy." Illinois v. Andreas, 463-U.S. 765, 103 S. Ct. 3319 (1983).



In the instant case, although unaware of it at the time, the police followed the exhortations of a prior case which is amazingly similar as the case at bar. In U.S. v. Waxman, police obtained a search warrant for three stolen art objects. U.S. v. Waxman, 572 F. Supp. 1136 (1983). Since the police had decided that Dr. Waxman was a collector of art (as was Appellant) the affidavit "stated that Defendant was a collector of art, that each of the stolen items was rare, unique, and valuable, and that the items had not surfaced in the art community and were difficult to sell. The plain theory to connect the objects to Defendant's residence obviously was that it is likely an art collector would store or display artwork in a place where he most often could appreciate it, his primary residence.

Upon execution of that warrant, the police found a plethora of artworks, many of

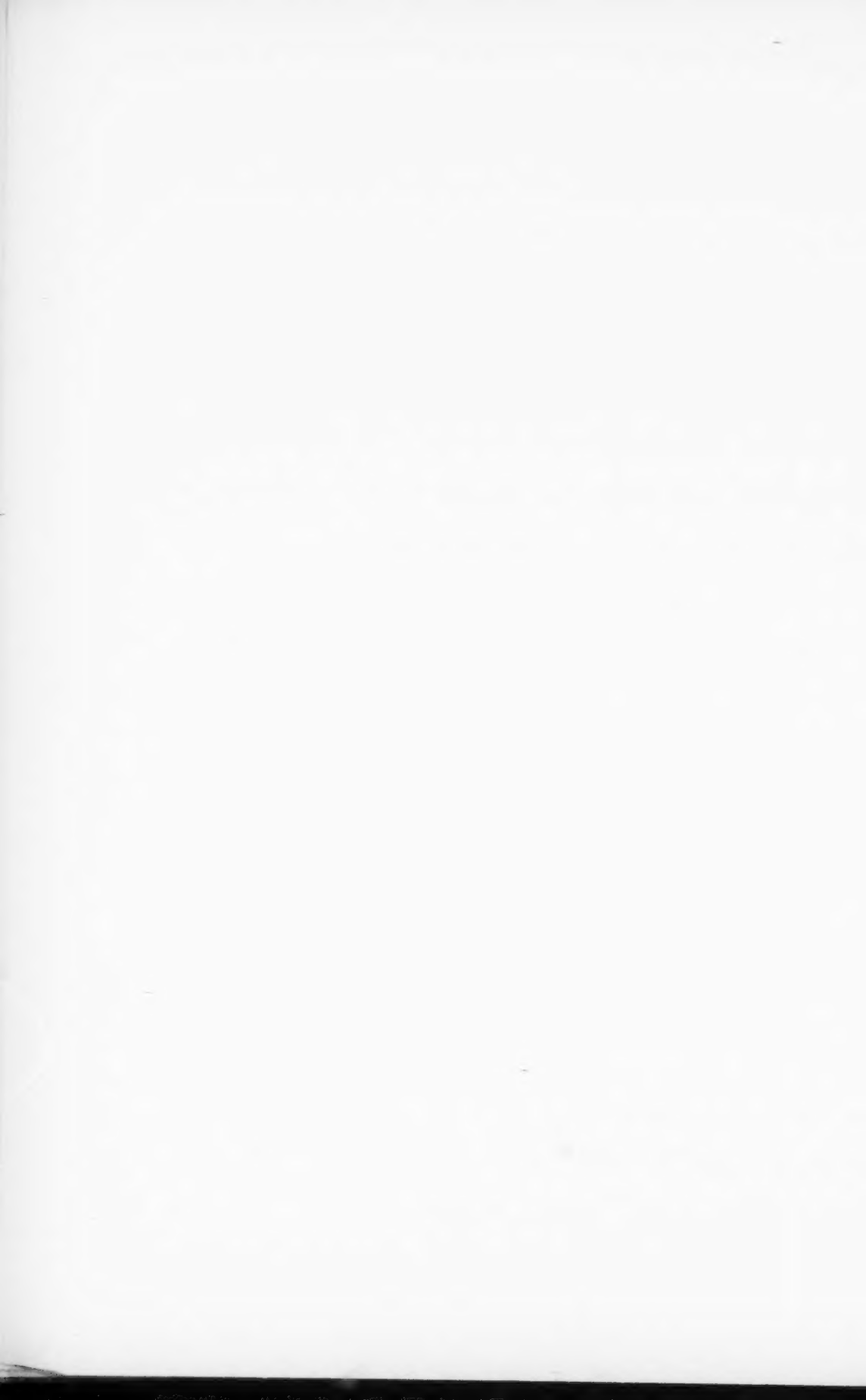


which were instantly identifiable to the officers as stolen. The officers called in other experts and eventually 169 objects not on the warrant were seized. Of the 169 objects seized without a warrant, testimony was received regarding only approximately 25 of them. The only testimony received on the remaining objects was that the police thought they were probably stolen because of the 25 objects they knew to be stolen. The 25 objects that testimony was received on were admitted into evidence. The remainder of the objects were suppressed. The opinion of the court stated that "[w]hile I do not suggest that the officers involved here, or any officers for that matter, close their eyes to situations where their suspicions of criminal activity are unverified, there are other safeguards such as photographing the premises and then obtaining a second search warrant which can protect against general



exploratory searches and wholesale seizures
condemned by courts and the warrant clause
of the Constitution. Emphasis supplied.
U.S. v. Waxman, supra.

Could the police in the instant case have done any more than follow the explicit directions set down in Waxman? The police were attempting to preserve possible evidence and ensure that it was not wrongfully disposed of and at the same time were seeking in the least obtrusive way possible to perform a complete investigation into possible wrongdoing. The police, pursuant to a warrant, had a right to be in Appellant's home. Once the police were in the house, Appellant lost all right to privacy to any items in plain-view and any items legitimately found while searching those things listed in the warrant. The Horton court stated that if an article is already in plain view, neither its



observation nor its seizure would involve any invasion of privacy for Fourth Amendment purposes. Horton v. California, 110 S. Ct. 2301 (1990).

The mere taking of pictures deprived Appellant of none of his possessory rights in any items he lawfully owned.

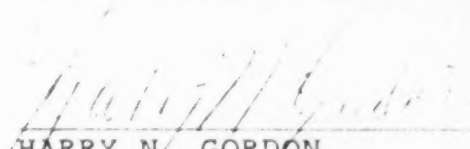
For the above stated reasons, it is respectfully requested that cert be denied as to this issue. There seems to be no disagreements as to this issue in the district courts of the federal system nor does justice require a rendering of an opinion of this court on this issue.



CONCLUSION

For all of the above and foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,


HARRY N. GORDON
District Attorney
Western Judicial Circuit
325 E. Washington Street
Room 500
Athens, Georgia 30601

APPENDIX



EXHIBIT A

Georgia, Wilkes County

CITY OF Washington, GEORGIA

Affidavit and Complaint for Search Warrant
Before Robert L. Stevens, Judge of Superior
Court (Name and Title of Person before whom
affidavit is made)

The undersigned being duly sworn
deposes and on oath says that he has reason
and probable cause to believe that certain
property, namely rare maps, rare books, rare
plates and business records between art
dealers and Robert M. "Skeet" Willingham
indicating sales of University of Georgia
property, is now being unlawfully concealed
in an upon the premises known as 405 South
Alexander Avenue, and a 1985 Blue Mercedes
Benz Model 190E, Tag "Books", located in the
City of Washington, Wilkes County, Georgia,
in the custody or control of Robert M.
"Skeet" Willingham and that deponent does

verily believe and has probable cause to believe from facts within his knowledge as set out herein that the property heretofore described is kept and concealed in and upon said premises in violation of the laws of the State of Georgia and for the purpose of violating the same. The facts tending to establish affiant's reason for belief and probable cause for belief are as follows: See Attached Affidavit. This affidavit and complaint is made for the purpose of authorizing the issuance of a search warrant for the person or premises described above.

Sworn to before me and subscribed in my presence this 22 day of December, 1986.

Mitchell F. Jones

Signature of Affiant

Robert L. Stevens

Signature and Title of

Officer before whom

affidavit is made



Georgia, Wilkes County

To Mitchell F. Jones (Name of Peace Officer making complaint) and to all and singular the Peace Officers of the State of Georgia, "GREETING":

The foregoing affidavit and complaint having been duly made before me and the same, together with the facts submitted under oath contained therein having satisfied me that there is probable cause to believe that the property described therein is being unlawfully concealed in and upon the premises described therein of rare maps, rare books, rare plates and business records between art dealers and Robert M. "Skeet" Willingham indicating sales of University of Georgia property.

YOU ARE HEREBY COMMANDED to enter and search said described premises, serving this warrant, and if the property described or

any portion of it be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within 10 days of this date or some other judicial officer, as required by law.

Given under my hand and seal this
22nd day of December, 1986, at 10:30
O'clock, A.M..

Robert L. Stevens

Signature and Title of
Officer Issuing Search
Warrant

AFFIDAVIT FOR A TOOMBS JUDICIAL CIRCUIT
(WILKES COUNTY) SEARCH WARRANT FOR THE
ENTIRE PREMISES OF 405 SOUTH ALEXANDER
AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA
BEING A TWO STORY WHITE FRAME HOUSE, WHITE
PICKET FENCE AROUND THE HOUSE, AND GARAGE IN
THE BACK, THE HOUSE IS OCCUPIED BY ROBERT M.
"SKEET" WILLINGHAM, JR. THE VEHICLE OWNED BY
WILLINGHAM, JR. IS A 1985 BLUE MERCEDES BENZ
MODEL 190E LICENSE NUMBER GEORGIA 1986
"BOOKS".

CONFIRMATION OF THE ABOVE WAS MADE BY
PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS
RESIDENCE, SEEING LETTERHEAD STATIONERY WITH
HIS NAME AND ADDRESS (405 SOUTH ALEXANDER,
WASHINGTON, GA), CHECKING HIS FORMER
EMPLOYER'S RECORDS. THE VEHICLE DESCRIBED
WAS VERIFIED AS BEING WILLINGHAM'S AFTER
CHECKING UNIVERSITY OF GEORGIA PARKING
SERVICES RECORDS.

The University of Georgia Police
Department is currently investigating the

theft of rare books, rare manuscripts and rare prints from the University of Georgia library.

In October 1985, the UGA Police Department was notified that a one-of-a-kind letter written by Nathaniel Green [sic] in 1783, was missing from the library and an art dealer in Philadelphia, PA had the letter. The art dealer was concerned that the letter was stolen and wanted to get the letter back to the University of Georgia library. The letter was returned to the University of Georgia library on October 14, 1985.

The investigation revealed that several art dealers handled the manuscript prior to the library being notified by the art dealer in Philadelphia. A contact of the art dealers revealed that a dealer by the name of Harvey Dan Abrams of Atlanta, GA had purchased the manuscript from an unknown

person for \$200.00. Mr. Abrams in turn began the chain as the investigators know it. Mr. Abrams had no records of the sale nor could he give investigators information as to who the seller was, where he came from, or his destination. The library did not wish to pursue the incident at that time because the manuscript was returned.

In July 1986, the University of Georgia Police Department was again notified by the University of Georgia library that a rare map of South Carolina was missing. Police investigators began to interview employees about the theft and on August 8, 1986 the map reappeared. The library at that time began an inventory of the maps they had in their possession and discovered that many of the maps were missing. Of great concern was the theft of twenty-eight (28) maps from a collection once owned by President George Washington. Library officials learned that



an art dealer in New York, New York, W. Graham Arader, III, had for sale twelve (12) maps from an identical collection. According to records, the University of Georgia and the Boston Public Library have the only sets of these maps. A check was made and it was confirmed that the Boston Library had possession of their maps.

On October 6, 1986, W. Graham Arader, III was contacted by investigators and he had explained that poor records and did not know who he could have purchased the maps from but he did mention he could have purchased the maps from an employee of the University of Georgia library by the name of Robert M. "Skeet" Willingham, Jr. Arader stated that he had purchased maps from Willingham, Jr. and Willingham, Jr. did not want any receipts. Arader also said that Willingham, Jr. sold an eight (8) volume set of Redoute's Lillies [sic] to Dr. Lawrence



Alligood of Carrollton, Georgia several years ago.

On October 6, 1986, police investigators were notified that the eight (8) volume set of Redoute's Lillies [sic] were missing from the University of Georgia library.

On October 15, 1986, Mr. Robert M. "Skeet" Willingham, Jr. was interviewed by police investigators. Mr. Willingham, Jr. admitted selling some maps to Arader, but could not say as to what maps he did sell. Willingham also said he had sold an eight (8) volume set of Redoute's Lillies [sic] to a Dr. Lawrence Alligood several years ago. Willingham said he used Harvey Dan Abrams as the go-between for the sale. When asked where he got the eight (8) volume set Willingham, Jr. replied that he received them from the estate of a deceased relation, but he could not prove it.



On December 12, 1986, Dr. Lawrence Alligood was interviewed by police investigators concerning his purchase of an eight (8) volume set of Redoute's Lillies [sic]. Dr. Alligood said he did purchase the eight (8) volume set from Willingham, Jr. and that Harvey Dean Abrans had been the go-between in the sale. Dr. Alligood sold six (6) volumes of the set, but kept volumes one (1) and two (2). Volumes one (1) and two (2) were at his home. The two volumes were taken by investigators so that an analysis could be made as to the ownership of the books.

The ownership of the University of Georgia's copy of Redoute's Lillies [sic] could be proven by looking on the title page of volume one (1). Between 1802 and 1816, 60 copies of Redoute's Lillies [sic] were printed. The number of copies that exist today is unknown. The University of

Georgia copy is unique to all others because an employee of the University, Henry Jackson, signed his name to the title page of Volume one (1). It is believed that Jackson signed his name to the title page prior to 1853. University of Georgia records indicate that the signature would be present. Police investigators were unable to see the signature with the naked eye. The two volumes were taken to the State of Georgia Crime Lab on December 15, 1986 and on December 16, 1986, the laboratory reported that Jackson's signature was indeed in the right hand corner of the title page of volume one (1).

On December 16, 1986, Harvey Dan Abrams was interviewed by police investigators. Abrams changed his story as to how he received the Nathaniel Greene manuscript. Abrams admitted that he did not did not tell investigators the truth in October, 1985.



Abrams admitted that he received the Nathaniel Greene letter from Robert M. "Skeet" Willingham, Jr. Abrams admitted selling the eight (8) volume set of Redoute's Lillies [sic] for Robert M. "Skeet" Willingham to Dr. Lawrence Alligood. Abrams told investigators that he was told by Willingham, Jr. that the set of Redoute's Lillies [sic] had been in his family and became his when a relative passed away. During the interview of Abrams, an associate of Abrams, Gary Eugene Duda, gave to investigators a print of an Indian Chief. The print, John Ross - Indian Chief, is missing from Volume III (3) of a three (3) volume set of books owned by the University of Georgia. The set of books is entitled Indian Tribes of North America, McKenney and Hall, ed. 1842.

As of Wednesday, December 17, 1986, police investigators were given an inventory



of missing maps, plates and books. It is known that twenty-eight (28) maps valued at approximately \$140,000.00, approximately eight hundred fifty-three (853) prints valued at approximately \$853,000.00 are missing from the University of Georgia library.

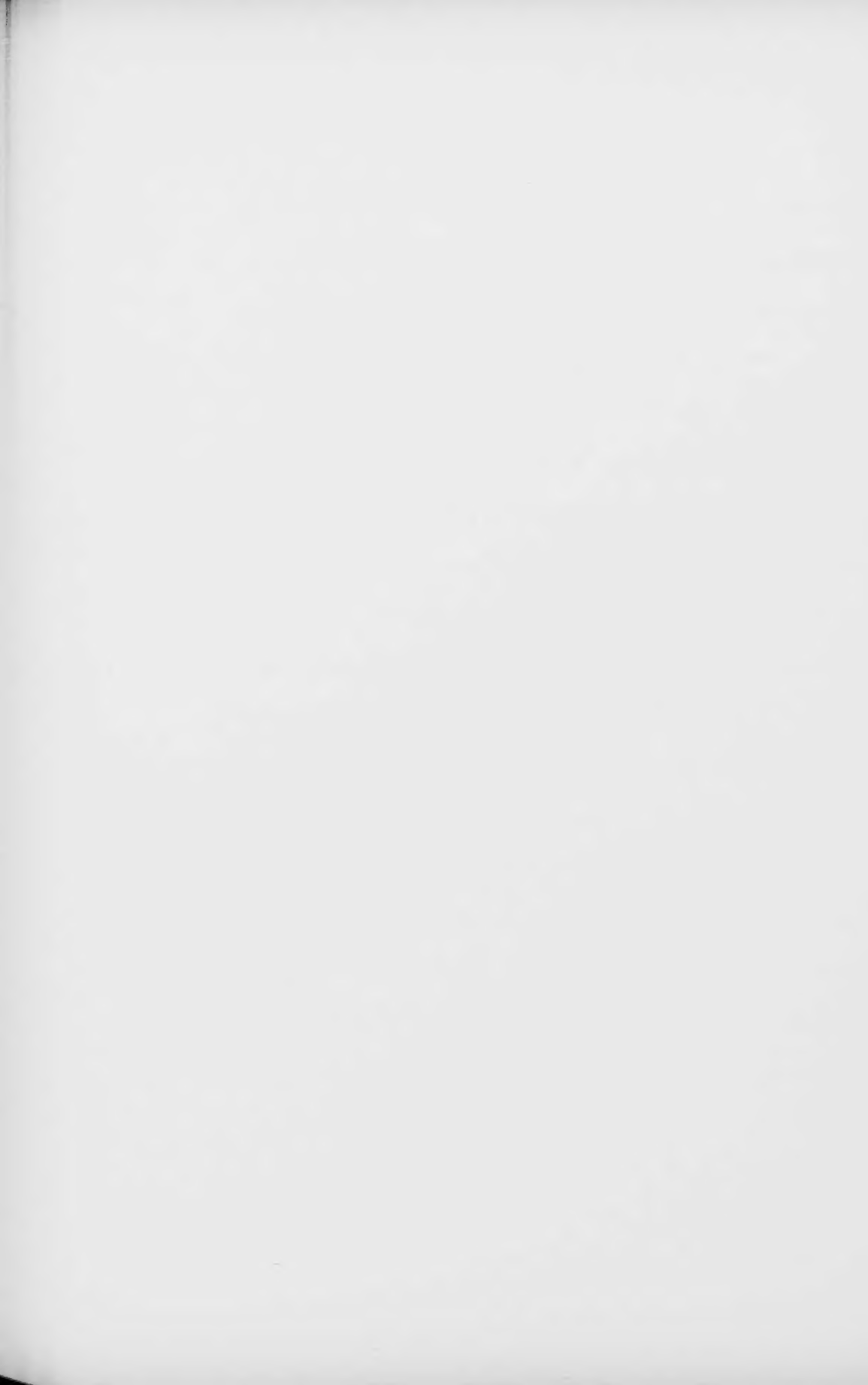
It is known that Robert M. "Skeet" Willingham, Jr. sells and purchases rare books, manuscripts, philatelic materials and library properties. Three people, Harvey Dan Abrams, Dr. Lawrence Alligood, and Gary Eugene Duda say that they have received property from Willingham, Jr. Two pieces of property, Nathaniel Greene's letter and volume 1 of Redoute's Lillies [sic] have been positively identified as belonging to the University of Georgia. The print of John Ross is currently being analyzed at the State of Georgia Crime Lab. Robert "Skeet" Willingham, Jr. admitted to police



investigators that he did sell to Dr. Lawrence Alligood an eight (8) volume set of Redoute's Lillies [sic].

For the above reasons I have probable cause to believe there is now contained within the premises or vehicle or person of Robert M. "Skeet" Willingham, Jr. the following property belonging to the University of Georgia. (See the four (4) attached sheets.) There is also probable cause to believe that there exists withing [sic] the premises or vehicle or person of Rober [sic] M. "Skeet" Willingham, Jr. business documents and correspondence between Willingham, Jr. and art dealers involving sales of rare manuscripts, rare books, rarer maps and rare prints belonging to the University of Georgia.

Afficant Mitchell F. Jones



Sworn to and subscribed before me this day,
Dec. 22nd, 1986.

Judge Robert L. Stevens

Superior Court



RARE BOOKS MISSING FROM THE HARGRETT

RARE BOOK AND MANUSCRIPT LIBRARY

AS OF DECEMBER 16, 1986

1. BLUME, KARL LUDWIG
Flora javae nec non
Insularum Adjacentium
Auctore Carolo Ludovico
Blume 1828
3 volumes (238 plates total)
2. LACEPEDE, BERNARD GERMAIN ETIENNE
LA MENAGERIE DU MUSEUM
National D'Histoire Naturelle
. Paris, 1801 (information of
number of volumes and plates destroyed)
3. REDOUTE, PIERRE JOSEPH
Les Mois 18--
12 color plates (very rare)
4. REGNAULT, NICOLAS FRANCOIS
La Botanique muse a la Portee de Tout Le
Monde



. 1774-1784

3 volumes (472 plates total)

5. VENTENAT, ETIENNE PIERRE

Jardin de la Malmaison

. Paris, 1803-1804

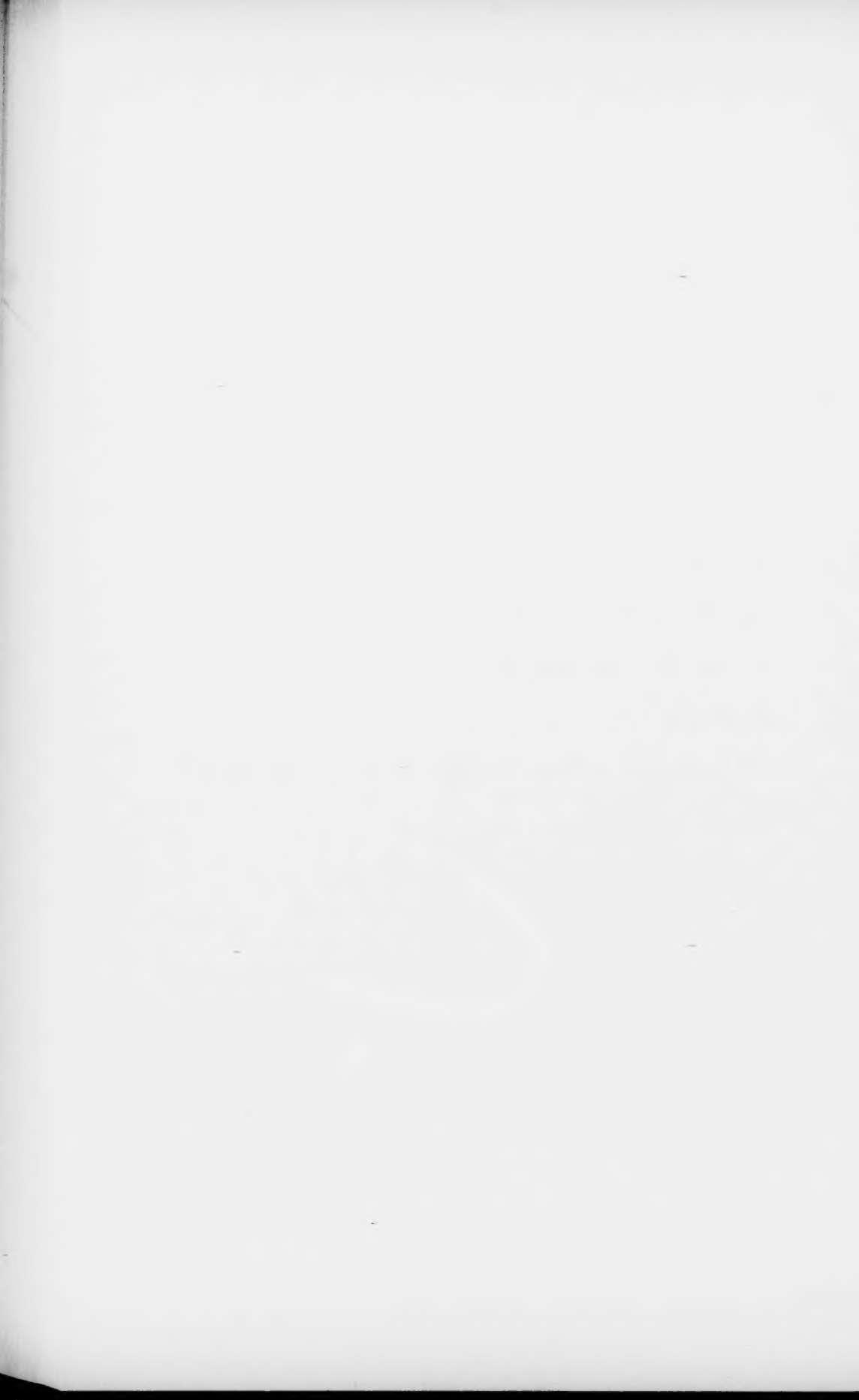
2 volumes (120 plates -

plates by Redoute)

FULL COLOR PLATES

1. BUFFALO HUNT
2. OPOTHE YOHOLO - A Creek Chief
3. MENAWA - A Creek Warrior
4. JOHN RIDGE - A Cherokee Chief
5. SELOcta - A Creek Chief
6. ASSEOLA - A Seminole Leader
7. THE CHIPPEWAY WIDOW
8. MICANOPY - A Seminole Chief
9. Mistipee
10. POCAHONTAS - The Princess who rescued
Captain Smith
11. LEDAGIE - A Creek Chief

* Note: All plates are missing from Indian Tribes of North America (Vols 2 & 3) -
McKenney & Hall, ed. - 1842



MAPS MISSING FROM HARGRETT RARE BOOK

AND MANUSCRIPT LIBRARY AS OF

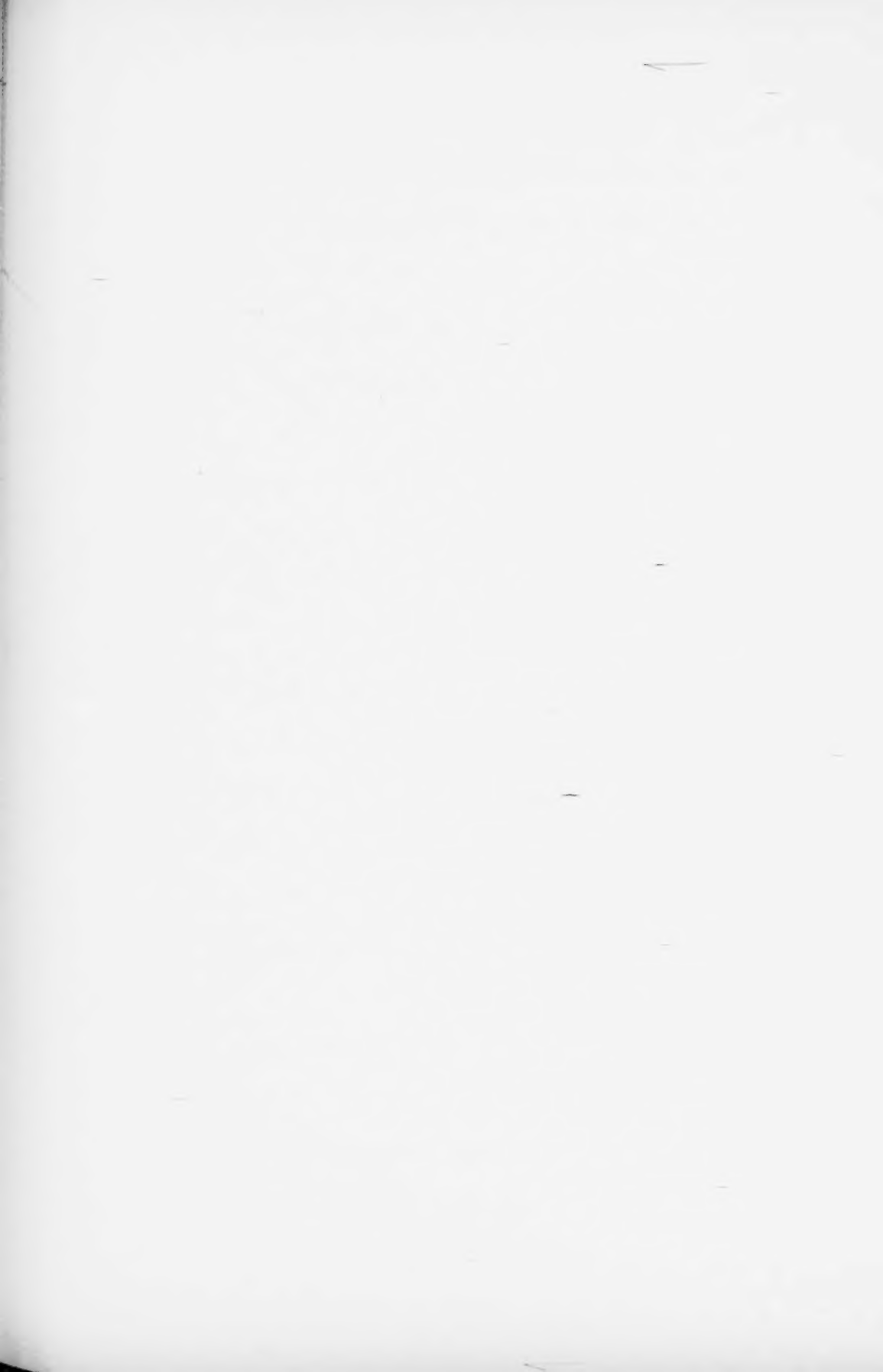
DECEMBER 16, 1986

All of the following items are from an Atlas
(1776) originally bound:

1. PROVINCE OF QUEBEC - Robert Sayer, n.d.
2. PLAN OF QUEBEC - E. Oakley, n.d.
3. AN EXACT CHART OF THE RIVER OF ST.
LAWRENCE - Thomas Jefferys
4. A CHART OF THE GULF OF ST. LAWRENCE -
Sayer & Bennett
5. A GENERAL CHART OF THE ISLAND OF
NEWFOUNDLAND - Sayer & Bennett
6. A GENERAL CHART OF THE BANKS OF
NEWFOUNDLAND - Sayer & Bennett
7. A MAP OF NOVA SCOTIA - Montresor (1768)
8. A PLAN OF THE ISLAND OF ST JOHN -
Capt. Holland
9. A GENERAL MAP of the british colonies -
C. Bowles



10. A MAP OF THE MOST INHABITED PART OF NEW ENGLAND - T. Jefferys (1774)
11. A PLAN OF BOSTON
12. A TOPOGRAPHICAL CHART OF THE BAY OF NARRAGANSETT - Charles Blaskowitz (1777)
13. A PLAN OF THE TOWN OF NEWPORT - Charles Blaskowitz (1777)
14. A SURVEY OF LAKE CHAMPLAIN - William Brassier
15. A PLAN OF NEW YORK ISLAND - William Faden (1776)
16. A PLAN OF THE OPERATIONS OF THE KING'S ARMY IN NEW YORK AND EAST NEW JERSEY - C. J. Sauthier (1777)
17. THE PROVINCE OF NEW JERSEY - W. Faden (1777)
18. A PLAN OF THE CITY OF NEW YORK - J. Montresor (1775)
19. PLAN OF THE OPERATIONS OF GENERAL WASHINGTON . . . IN NEW JERSEY - W. Faden



20. A MAP OF PENNSYLVANIA - Sayer & Bennett
(1775)
21. A PLAN OF THE CITY AND ENVIRONS OF
PHILADELPHIA - W. Faden (1777)
22. A PLAN OF THE CITY OF PHILADELPHIA -
B. Easburn
23. A CHART OF DELAWARE BAY - J. Fisher
24. A MAP OF NORTH (?) CAROLINA AND PART OF
GEORGIA - W. DeBrahm
25. PLAN OF THE ATTACK OF FORT SULLIVAN -
W. Faden
26. A VIEW OF SAVANNAH - P. Gordon
27. PLAN OF AMELIA ISLAND IN EAST FLORIDA.
A CHART OF THE ENTRANCE INTO ST. MARY'S
RIVER. A CHART OF THE MOUTH OF THE
NASSAU RIVER - Will Fuller
28. COURSE OF THE MISSISSIPPI RIVER - J.
Ross



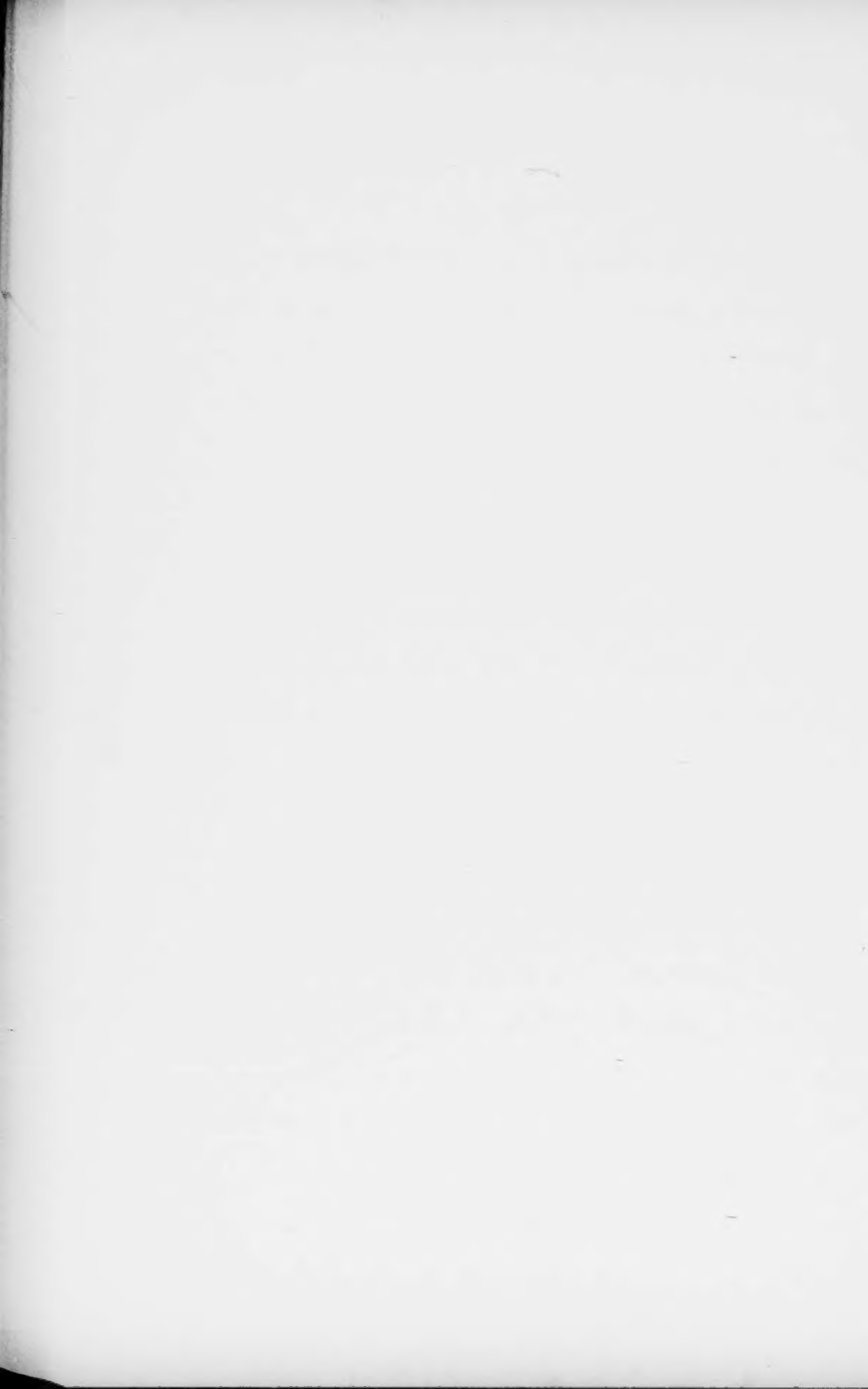
EXHIBIT B

AFFADAVIT [sic] FOR A TOOMBS JUDICIAL CIRCUIT (WILKES COUNTY) SEARCH WARRANT FOR THE ENTIRE PREMISES OF 405 SOUTH ALEXANDER AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA BEING A TWO STORY WHITE FRAME HOUSE, WHITE PICKET FENCE AROUND THE HOUSE, AND GARAGE IN THE BACK. THE HOUSE IS OCCUPIED BY ROBERT M. "SKEET" WILLINGHAM, JR. THE VEHICLE OWNED BY WILLINGHAM, JR. IS A 1985 BLUE MERCEDES BENZ MODEL 190E LICENSE NUMBER GEORGIA 1986 "BOOKS".

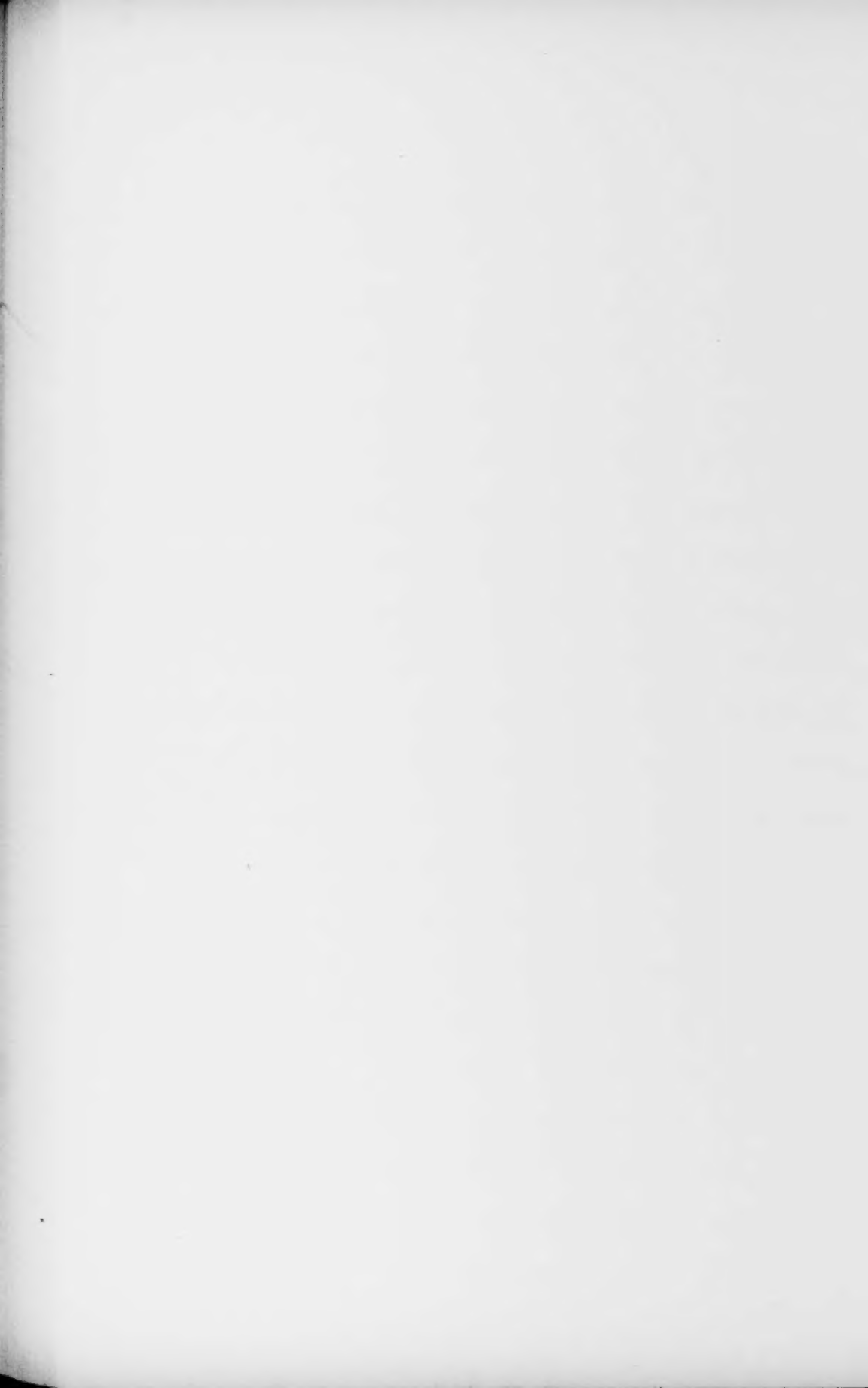
CONFIRMATION OF THE ABOVE WAS MADE BY PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS RESIDENCE, SEEING LETTERHEAD STATIONERY WITH HIS NAME AND ADDRESS (405 SOUTH ALEXANDER, WASHINGTON, GEORGIA), CHECKING HIS FORMER EMPLOYER'S RECORDS. THE VEHICLE DESCRIBED AS BEING WILLINGHAM'S AFTER CHECKING UNIVERSITY OF GEORGIA PARKING SERVICES RECORDS. HAVING EXECUTED A SEARCH WARRANT AT THIS RESIDENCE ON DECEMBER 22, 1986.



On Monday, December 22, 1986, University of Georgia police officers executed a search warrant at the residence of Robert M. "Skeet" Willingham, Jr. of Washington, Georgia. The purpose of the search warrant was to hopefully locate property belonging to the University of Georgia Library. Several pieces of property were taken from the Willingham residence during the search and one item has been identified as belonging to the University of Georgia. Many maps and prints were seen by investigators but were not taken during the search because it was not known if these items were missing from the University of Georgia Library. In particular a 1757 DeBrahm's map of Georgia and South Carolina was seen, an Eleazer Early map of the state of Georgia, and an Abbot's print entitled "Chestnut Butterfly" were seen by investigators but were not taken.



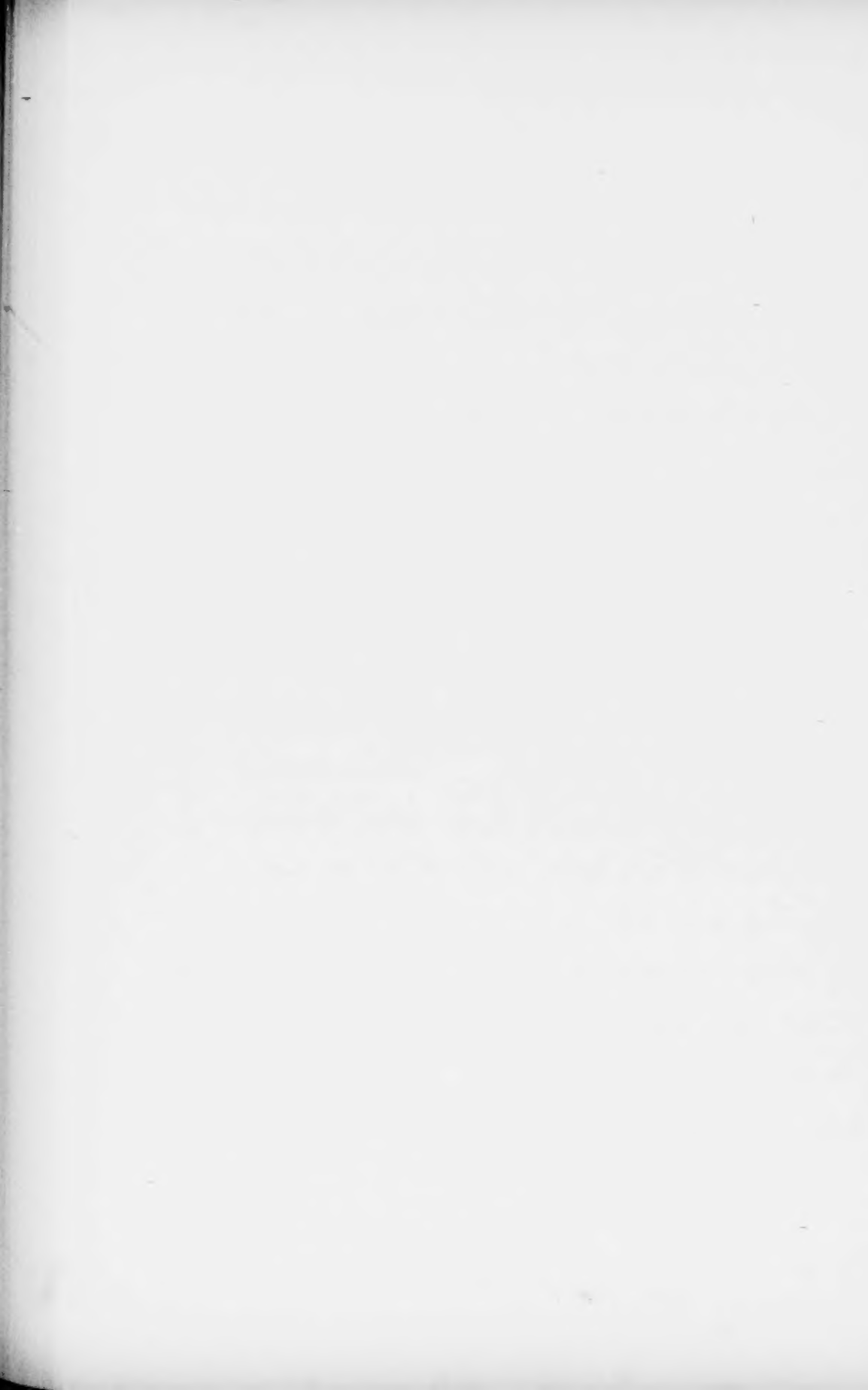
The University of Georgia has on record as owning five copies of the DeBrahm's map. The records indicate that one copy is black and white and the remaining copies are done in color. The University is currently missing the black and white copy and two copies done in color. The whereabouts of the black and white copy is unknown at this time. It is known that Willingham received, in March 1986, a check for the amount of \$2,500.00 from Harvey Dan Abrams. Abrams had sold for Willingham a DeBrahm's map of the same year as the ones owned by the University. Abrams was told by Willingham that this DeBrahm's map came from a reputable antique dealer in Charleston, South Carolina. The investigation revealed that the antique dealer had not heard of Willingham nor had they handled a Debrahm's map in many years. The Debrahm's map sold by Abrams was seen by University of Georgia



investigators at the house of the purchaser. The map is a large folded map similar to being in a case. One of the missing DeBrahm maps is also folded and similar to being in a case. A Debrahm's map done in color was seen by investigators in the home of Willingham.

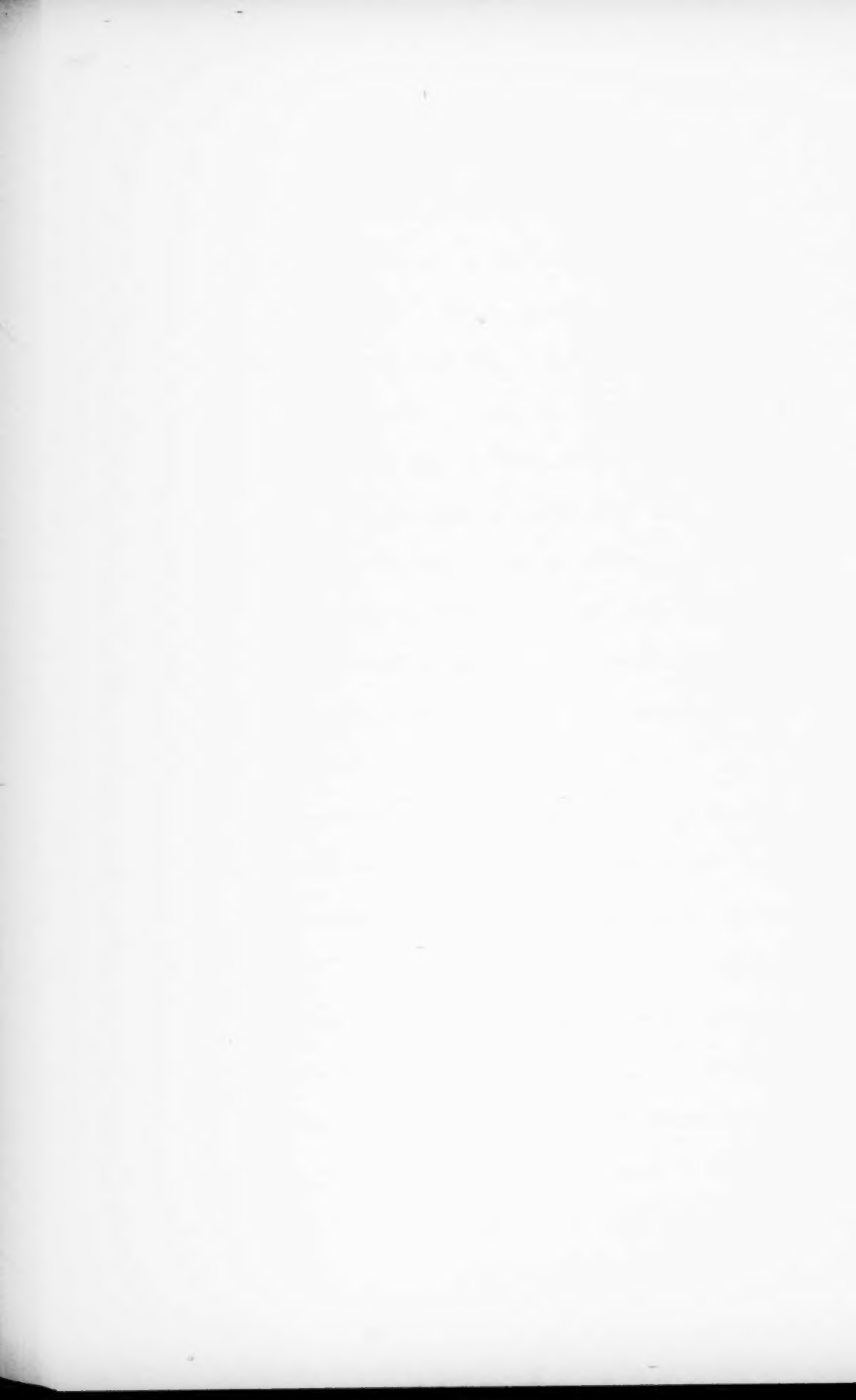
The University of Georgia has on record as having two Eleazer Early maps of Georgia. The University of Georgia now has but one Eleazer Early map of Georgia. University investigators saw an Eleazer Early map of Georgia in the home of Willingham during the execution of a search warrant on Monday, December 22, 1986.

The University of Georgia has on record (library cards) as owning two sets of Abbot's The Natural History of the Rarer Lepidopterous Insects of Georgia. The books are dated 1797 and come in sets of two volumes. During the execution of the search



warrant in the Willingham residence on Monday, December 22, 1986, a print was seen by University investigators. The print was of brown butterflies. At the time of the search, it was not known if this print belonged to the University of Georgia. Recently, the University was asked by another library to loan a set of Abbot's to them for an exhibition. The books were found and checked for completeness. It was discovered that two prints were missing from volume one of the Abbot's, "The Chestnut Butterfly" and "The Green Swallowtailed Emperor" were both missing. "The Chestnut Butterfly" was seen in the Willingham residence.

It is known that Robert M. "Skeet" Willingham, Jr. has sold property belonging to the University of Georgia. It is also known that property belonging to the University of Georgia was found in



Willingham's residence during the execution of a search warrant on Monday, December 22, 1986. It is also known that Willingham was employed by the University of Georgia Library and did have access to all the property mentioned.

For the above reasons, I have probable cause to believe there is now contained within the premises or vehicle or person of Robert M. "Skeet" Willingham, Jr. the above mentioned property belonging to the University of Georgia.

Affiant Mitchell F. Jones

Sworn to and subscribed before me this day,
Feb. 2, 1987.

Judge E. Purnell Davis

Judge Superior Court

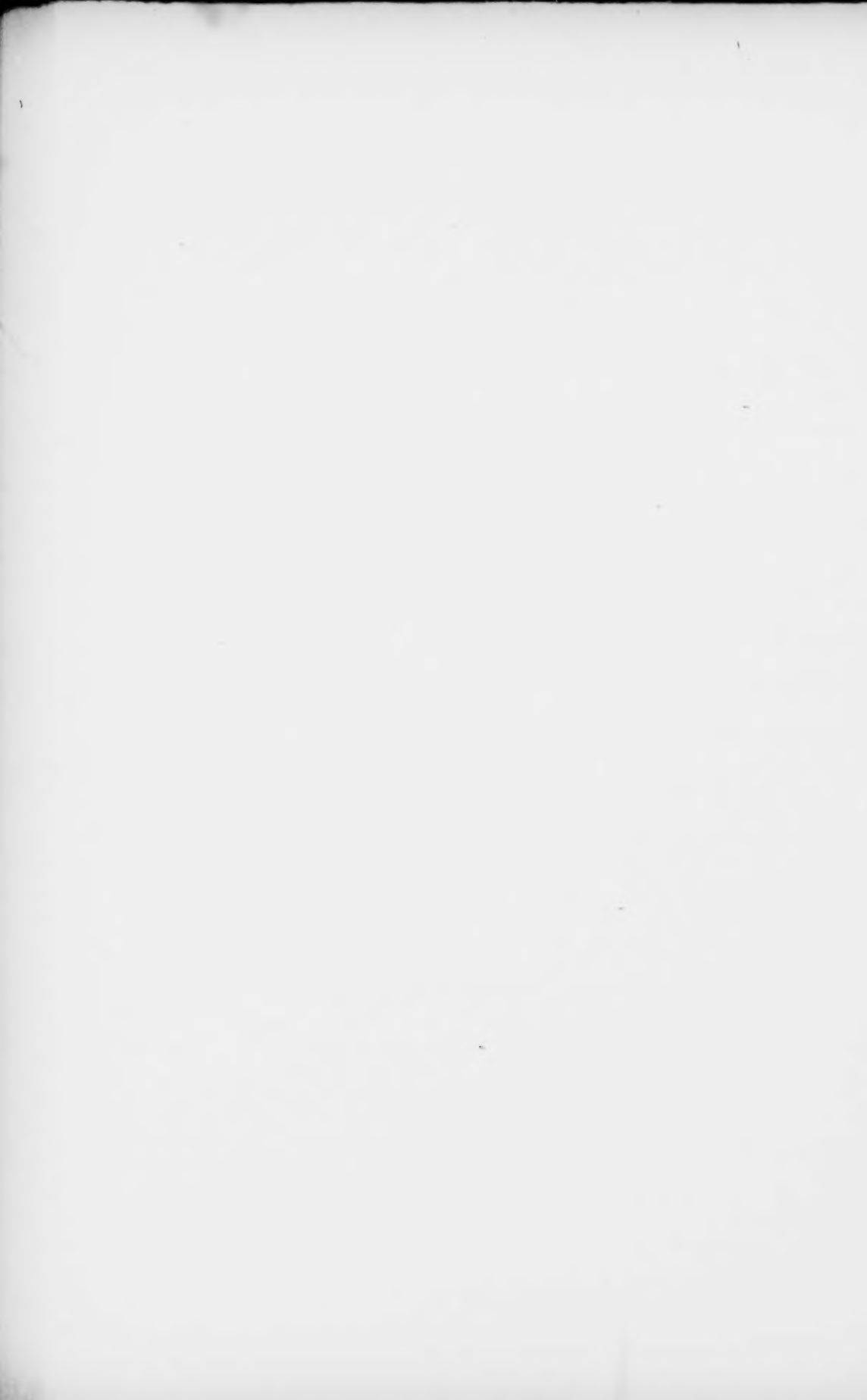
Toombs Judicial Circuit



EXHIBIT C

CONSENT TO SEARCH

I, Robert M. Willingham, Jr., having been advised of my right to require a search warrant before a search is made of the (premises) under my custody or control and of my right to refuse to consent to such a search without a warrant and of my right to withdraw any consent to search at any time, hereby authorize Lt. Mitchell F. Jones and other officers he may designat to assist him, to conduct a complete search of the premises located at 405 South Alexander Avenue Washington, GA, and I authorize said officers to take from said (premises) any documents, items of property or other evidence of a crime upon a receipt from said officers. I have been advised that said search is being conducted in connection with an investigation of a crime of Theft by



Taking. I have not been promised any reward of any type. I have not been threatened in any manner. I freely and voluntarily give my consent to conduct said search to the above officer with full understanding of my rights and my actions.

This 3rd day of February, 1987.

Robert M. Willingham, Jr.

(Signature)

Witnesses:

Randy L. Young

Michael W. Leonard



EXHIBIT D

Georgia, WILKES County

CITY OF Washington, GEORGIA

Before Robert L. Stevens, Judge of Superior
Court, (Name and Title of Person before whom
affidavit is made)

The undersigned being duly sworn
deposes and on oath says that he has reason
and probable cause to believe that certain
property, namely maps (see attached list).
is now being unlawfully concealed in and
upon the premises known as 405 South
Alexander Avenue, and a blue Mercedes Benz
Model 190E, Tag "Books". located in the City
of Washington, Wilkes County, Georgia, in
the custody of Robert M. "Skeet" Willingham,
Jr. and that deponent does verily believe
and has probable cause to believe from facts
within his knowledge as set out herein that
the property heretofore described is kept
and concealed in and upon said premises in



violation of the laws of the State of Georgia and for the purpose of violating the same. The facts tending to establish affiant's reason for belief and probable cause for belief are as follows: See attached affadavit [sic]. This affidavit and complaint is made for the purpose of authorizing the issuance of a search warrant for the person or premises described above. Sworn to before me and subscribed in my presence this 17th day of February, 1987.

Michael F. Jones _____

Signature of Affiant

Robert L. Stevens _____

Signature and Title of

Officer before whom

affidavit is made

Judge of Superior Court

of Toombs Circuit

GEORGIA, CLARKE COUNTY



To Mitchell F. Jones (Name of Peace Officer making complaint) and to all and singular the Peace Officers of the State of Georgia, "GREETING":

The foregoing affidavit and complaint having been duly made before me and the same, together with the facts submitted under oath contained therein having satisfied me that there is probable cause to believe that the property described therein is being unlawfully concealed in an upon the premises described therein of See attached affidavit.

YOU ARE HEREBY COMMANDED to enter and search said described premises, serving this warrant, and if the property described or any portion of it be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the



property before me within 10 days of this date or some other judicial officer, as required by law.

Given under my hand and seal this 17th, day of February, 1987 at 5:00 O'clock, P.M.

Robert L. Stevens

Signature and Title of
Officer Issuing Search
Warrant

Judge of Superior Court



AFFADAVIT [sic] FOR A TOOMBS JUDICIAL CIRCUIT (WILKES COUNTY) SEARCH WARRANT FOR THE ENTIRE PREMISES OF 405 SOUTH ALEXANDER AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA BEING A TWO STORY WHITE FRAME HOUSE, WHITE PICKET FENCE AROUND THE HOUSE, AND GARAGE IN THE BACK. THE HOUSE IS OCCUPIED BY ROBERT M. "SKEET" WILLINGHAM, JR. THE VEHICLE OWNED BY WILLINGHAM, JR. IS A 1985 BLUE MERCEDES BENZ MODEL 190E LICENSE NUMBER GEORGIA 1986 "BOOKS".

CONFIRMATION OF THE ABOVE WAS MADE BY PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS RESIDENCE, SEEING LETTERHEAD STATIONERY WITH HIS NAME AND ADDRESS (405 SOUTH ALEXANDER, WASHINGTON, GEORGIA), CHECKING HIS FORMER EMPLOYER'S RECORDS. THE VEHICLE DESCRIBED WAS VERIFIED AS BEING WILLINGHAM'S AFTER CHECKING UNIVERSITY OF GEORGIA PARKING SERVICES RECORDS. HAVING EXECUTED SEARCH WARRANTS AT THIS RESIDENCE ON DECEMBER 22, 1986 AND FEBRUARY 2, 1987.



On Monday, December 22, 1987 and Monday, February 2, 1987, University of Georgia police officers executed search warrants at the home of Robert M. "Skeet" Willingham, Jr. On Tuesday, February 3, 1987, University of Georgia police officers received permission from Willingham, Jr. for a consent of search of his home. A total of six (6) pieces of property were taken from the home of Willingham, Jr. during the three searches by University of Georgia police officers. Of the six (6) pieces of property taken, four (4) maps have been positively identified as being the property of the University of Georgia.

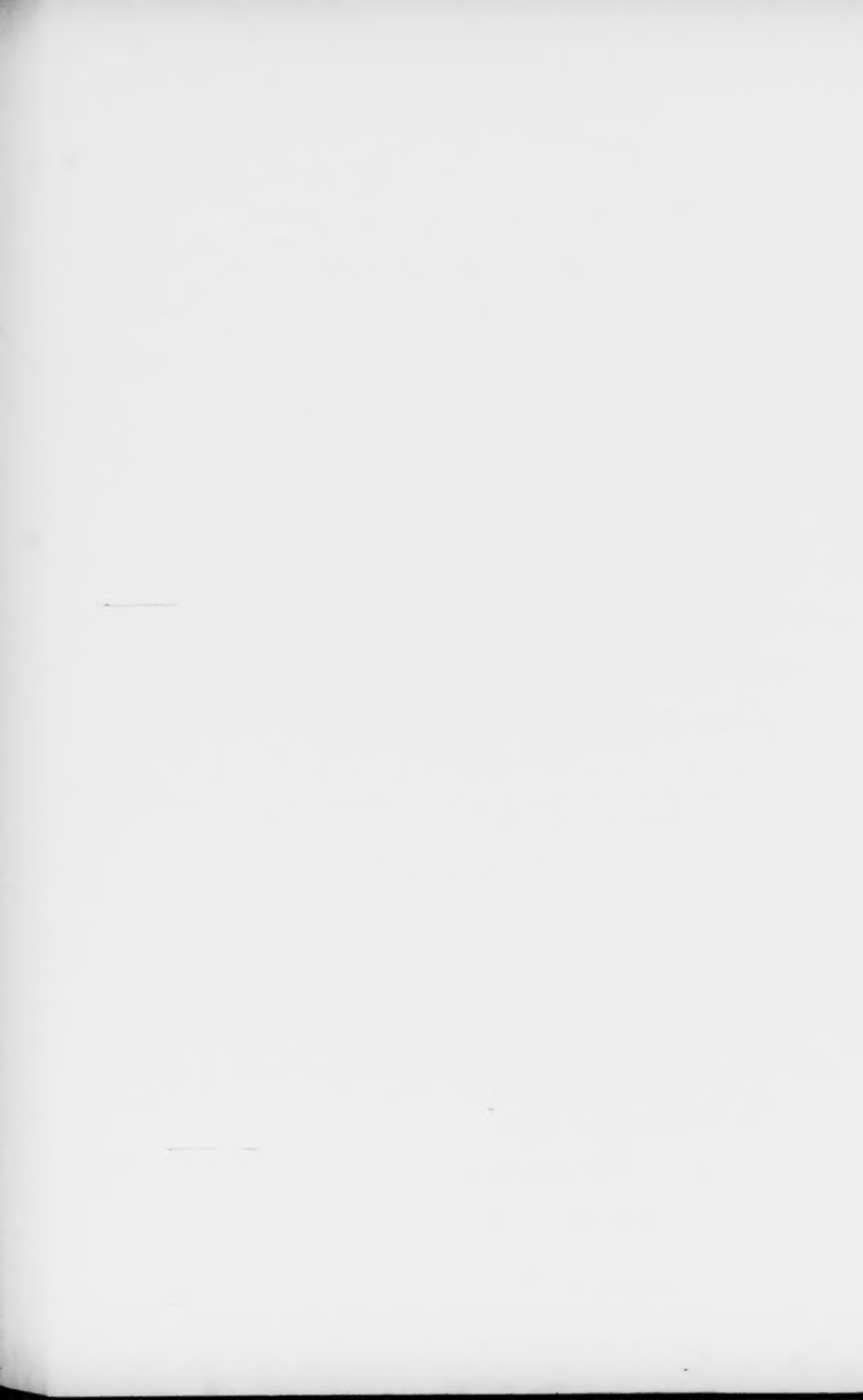
Photographs taken during the search conducted on February 2, 1987 were developed and studied beginning February 5, 1987. During the week of February 9 - 13, 1987, library officials notified University of Georgia investigators that maps seen in the



Willingham, Jr. home were possibly maps missing from the University of Georgia Library. Library records indicate the University of Georgia Library should have copies or multiple copies of ten (10) specific maps seen in the Willingham, Jr. home on Monday, February 2, 1987. Inventories completed on the ten (10) specific maps indicate the University of Georgia Library is currently missing one or more copies of each of the ten (10) specific maps.

It is known that Robert M. "Skeet" Willingham, Jr. worked at the University of Georgia Library, has sold material belonging to the University of Georgia Library and property found in his home has been identified as belonging to the University of Georgia Library.

For the above reasons, I have probable cause to believe there is now contained



within the premises or vehicle or person of Robert M. "Skeet" Willingham, Jr. the following property. (See attached list of maps).

Afficant Mitchell T. Jones

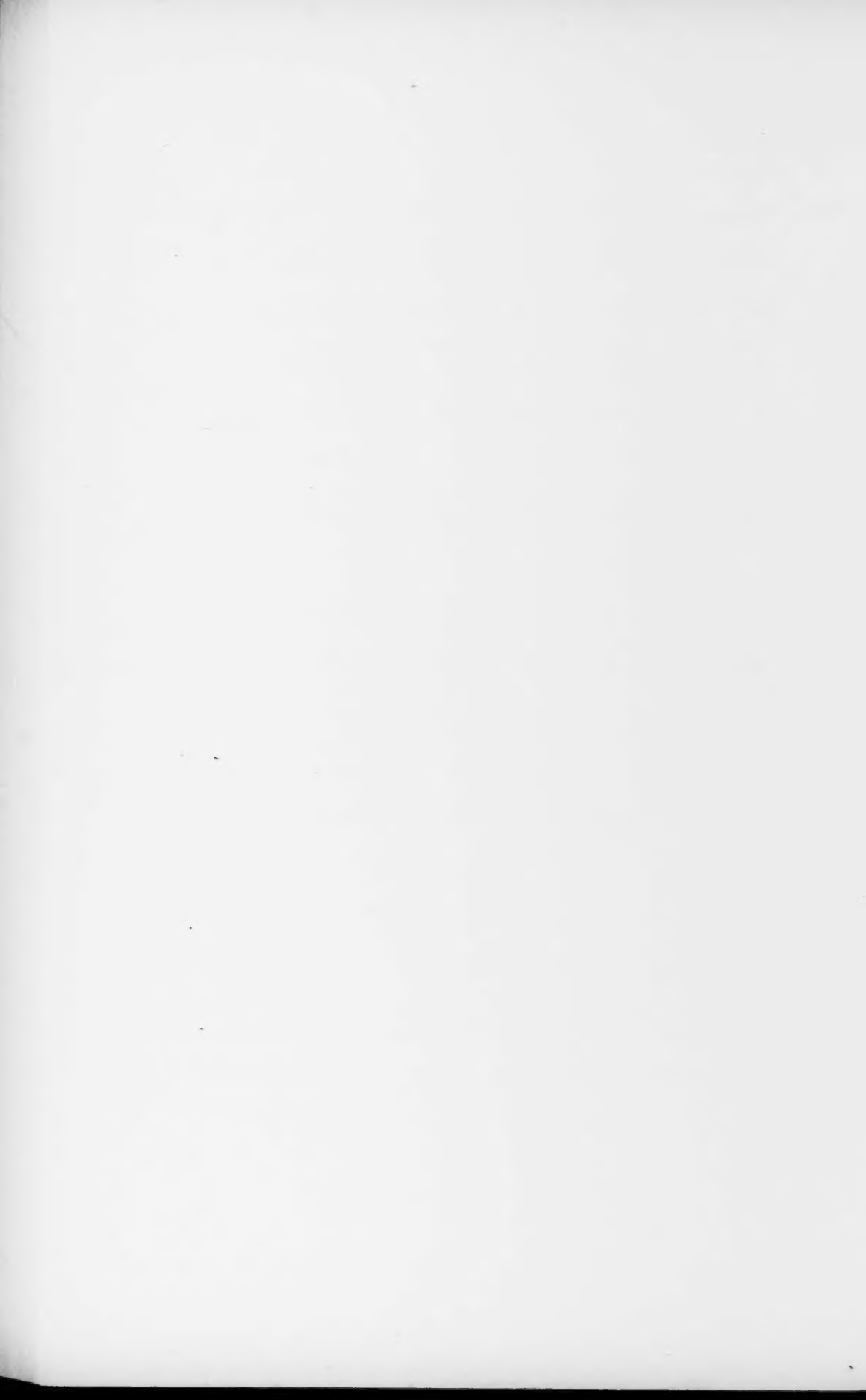
Sworn to and subscribed before me this day,
February 17th 1987

Judge Robert L. Stevens

J.S.C.T.C.



1. Map of the States of Alabama and Georgia, engraved and printed by Fenner, Sears and Co., London; published October 15, 1831 by I.T. Hinton, Simpkin and Marshall.
 - * The University has on record as having five (5) copies, but three (3) are missing.
2. A new and general map of the Southern Dominions belonging to the United States of America, viz: North Carolina, South Carolina, and Georgia: with the bordering Indian Countries and the Spanish Possessions of Louisiana and Florida; London, published by Laurie & Whittle, no. 53, Fleet Street, as the act directs. May 12, 1794.
 - * The University has on record as having eight (8) copies, but six (6) are missing.
3. A map of the states of Virginia, North Carolina and Georgia; comprehending the



Spanish provinces of east and west Florida, exhibiting the boundaries as fixed by the late Treaty of Peace between the United States and the Spanish dominions - Compiled from late surveys and observation by Joseph Purcell, New Haven, 1788?

- * The University has on record as having four (4) copies, but three (3) are missing.
- 4. Georgia from the latest authorities. W. Barker, sculp. Philadelphia, 1794 - 1795. Engraved for Carey's American edition of Guthrie's geography.
- * The University has on record as having seven (7) copies, but four (4) are missing.
- 5. A new map of Georgia with its roads and distances by H.S. Turner. Engraved by J. Knight, Philadelphia, Carey and Hart, 1839.

- * The University has on record as having five (5) copies, but one (1) is missing.
- 6. A map of such parts of Georgia and South Carolina as tend to illustrate the process and operations of the British Army. By Thomas Kitchin. published by R. Baldwin at the Rose Pater Noster Row for the London Magazine, May 1780.
- * The University has on record as having three (3) copies, but two (2) copies are [sic] missing.
- 7. A new map of Georgia, with a part of Carolina, Florida and Louisiana. Drawn from original draughts, assisted by the most approved maps and charts.. London 1748. Collected by Emanuel Bowen.
- * The University has on record as having two (2) copies, but one (1) is missing.
- 8. Southern section of the United States including Florida by John Melish,

1816. Stockholm, 1824.

- * The University has on record as having four (4) copies, but three (3) are missing.

9. A new map of part of the United States of North American , containing the Carolinas and Georgia, also the Floridas and part of the Bahama Islands and c. from the latest authorities by John Carey, engraver. 1806. London: Published by J. Carey Engraver and map-seller 181 Strand Feb. 1st, 1806.

- * The University has on record as having five (5) copies, but three (3) are missing.

10. Map depicting Salzburg Colony in America (A map of the county of Savannah).

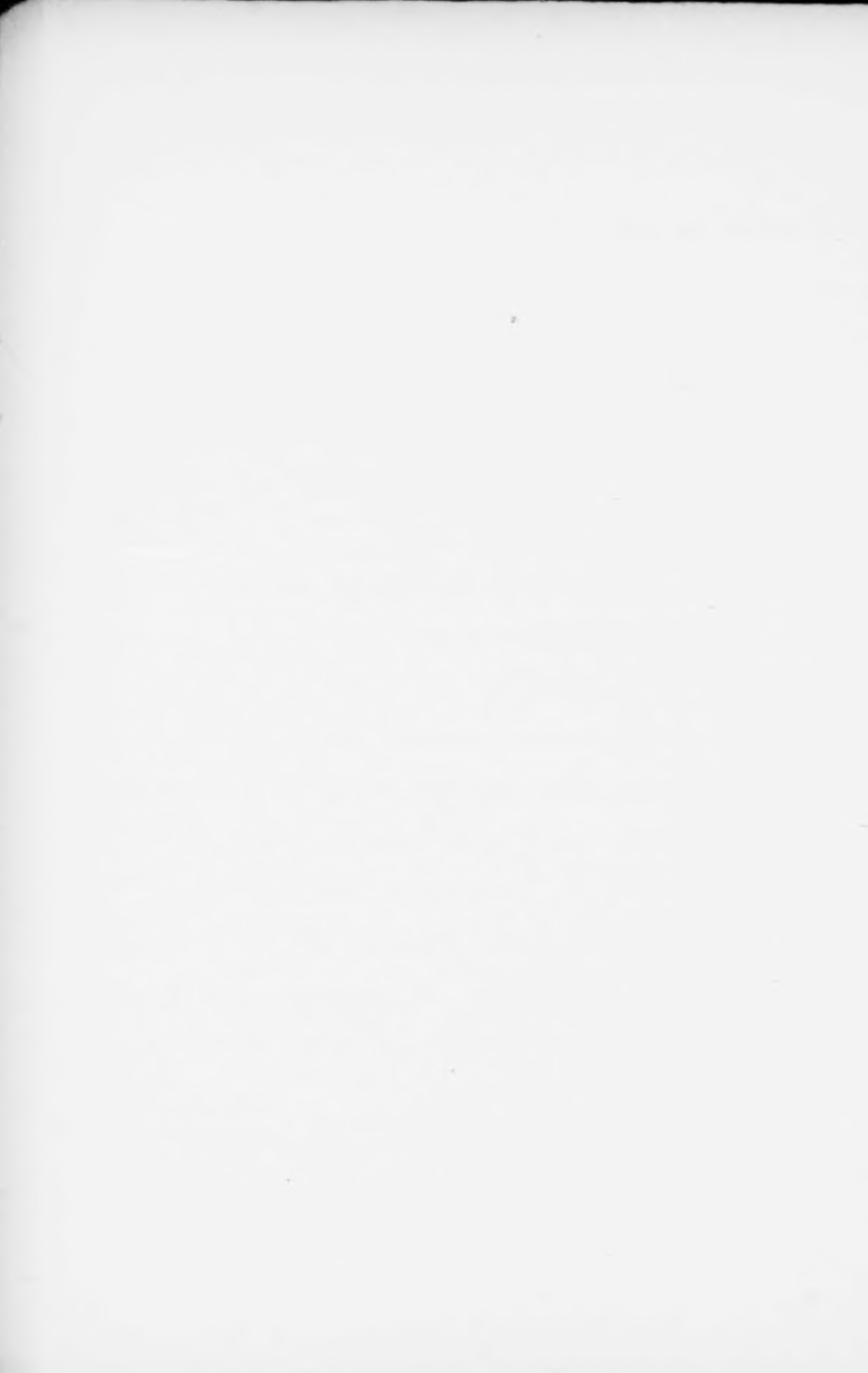
- * The University has on record as having two (2) copies, but one (1) is missing.



PROPERTY SEIZED:

- 1.) Map of the States of Alabama and Georgia, engraved and printed by Fenner, Sears, and Co., London: published October 15, 1831, by I. T. Hinton, Simpkin and Marshall.

(Framed).
- 2.) A New and General Map of the Southern Dominions belonging to the United States of America, viz: North Carolina, South Carolina, and Georgia: with the bordering Indian Countries and the Spanish Possessions of Louisiana and Florida; London, 1794, Laurie and Whittle. (Framed)
- 3.) A Map of the States of Virginia, North Carolina and Georgia; Purcell. New Haven. 1788 (Framed)
- 4.) Georgia from the latest authorities, W. Barker, sculp. Engraved for Carey's American edition of Guthries



geography. With "1795" written in pencil on the front side (lower right hand corner) and "1927 25" written in pencil on the front side (lower right hand corner). (Framed).

- 5.) A New Map of Georgia with its roads and distances by H.S. Tanner.

Engraved by J. Knight, Philadelphia, 1839. (Framed).

- 6.) A Map of Such Parts of Georgia and South Carolina as tend to illustrate the progrefs and operations of the British Army. By Thomas Kitchin, published by R. aldwin at the Rose Pater Noster Row for the London Magazine, may 1780. (Framed).

- 7.) A New Map of Georgia, with a part of Carolina, Florida and Louisiana drawn for original draughts, assisted by the most approved maps and charts. Vol. II P, 323, Collected by Eman, Bowen,

geographer to his majesty, (Framed)

- 8.) Southern Section of the United States
including Florida by John Melish,
1816. -(Framed).
- 9.) A New Map of the United States of
North America, containing the
Carolinas and Georgia, also the
Floridas [sic] and part of the Bahama
Islands and C. from the latest
authorities by John Carey Engraver,
Published by J. Carey engraver and map
seller. 181 Strand Feb. 1st 1806.
(Framed).
- 10.) Map of the County of Savannah, (Dieu
et mon Droit) (Framed)
- 11.) A New and Accurate Map of the Province
of Georgia in North America, "1780"
written in pencil by the in. (Framed).



EXHIBIT E

Georgia, WILKES County

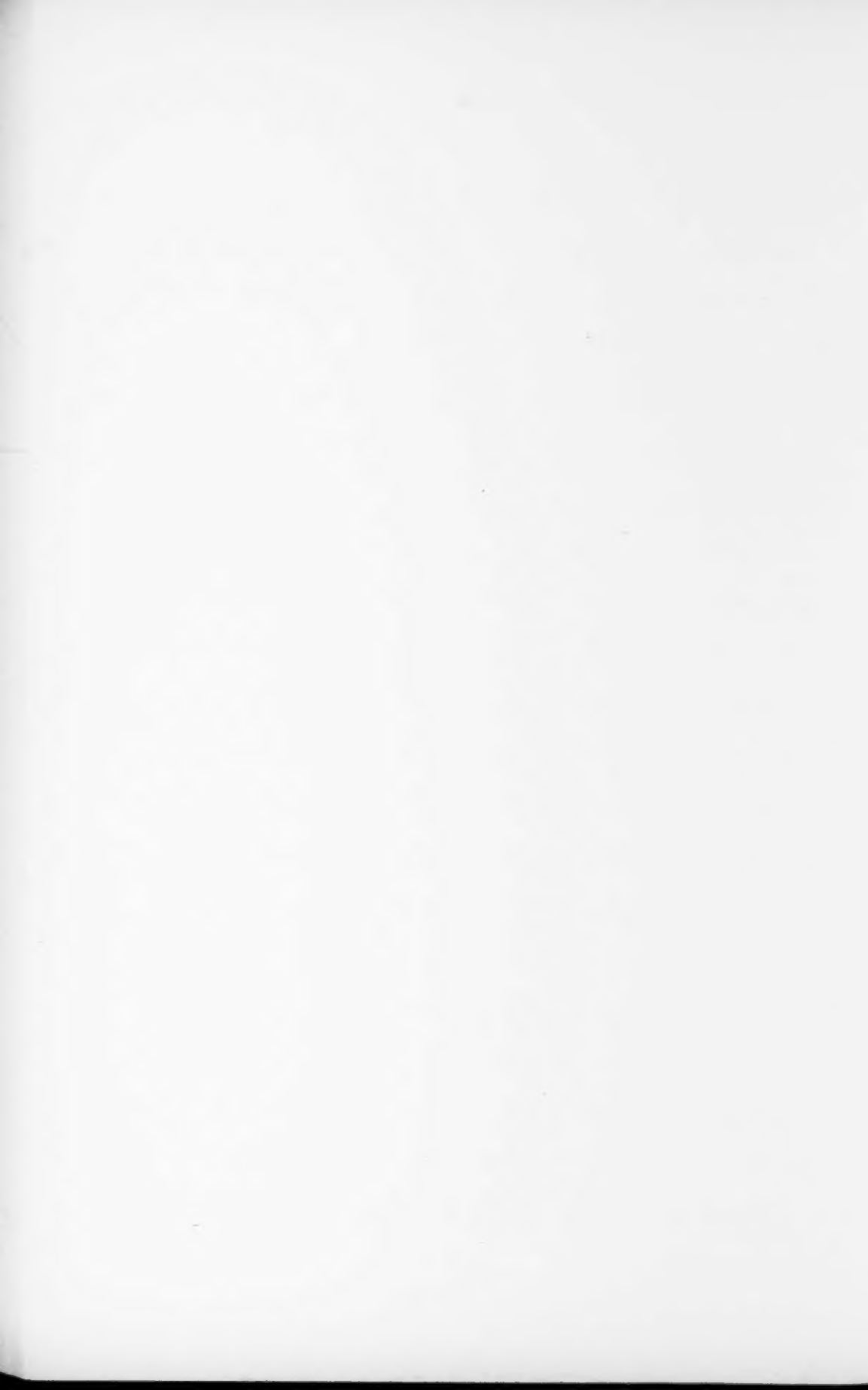
Affidavit and Complaint for Search Warrant
City of Washington, GEORGIA

Before Robert Stevens, Superior Court,
Toombs Judicial Circuit (Name and Title of
Person before whom affidavit is made)

The undersigned being duly sworn
deposes and on oath says that he has reason
and probable cause to believe that certain
property, namely No. 1 Friday, October 13,
1836 edition of the "Hancock Advertiser",
print of "Stone Mountain, Georgia" by Cheek,
a cancelled stock certificate from the
Georgia Railroad and Banking Company dated
1842.

is now being unlawfully concealed in and
upon the premises known as 405 South
Alexander Avenue and a blue Mercedes Benz
Model 190E, Tag "Books".

located in the City of Washington, Wilkes



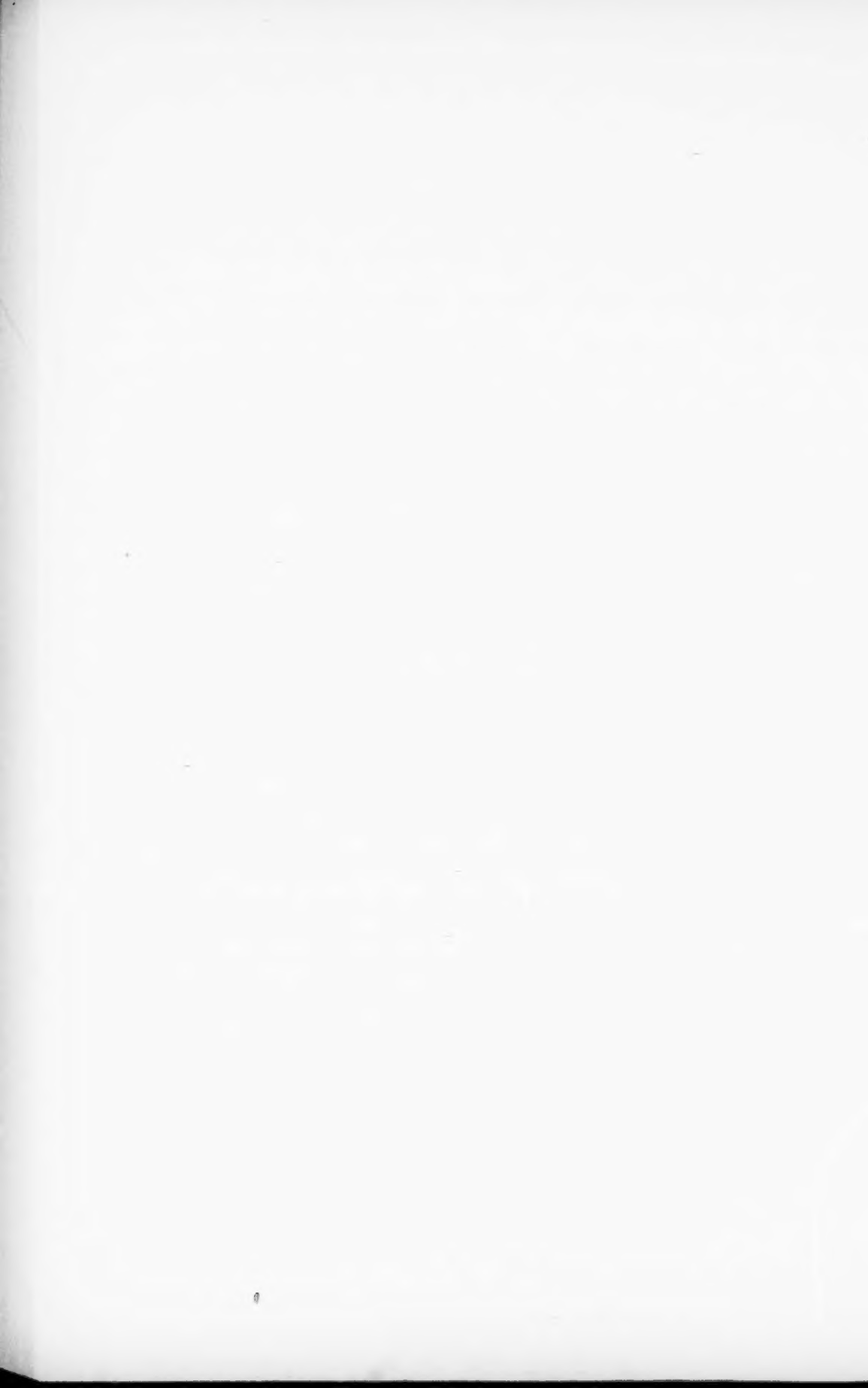
County, Georgia, in the custody or control of Robert M. "Skeet" Willingham, Jr. and that deponent does verily believe and has probable cause to believe from facts within his knowledge as set out herein that the property heretofore described is kept and concealed in and upon said premises in violation of the laws of the State of Georgia and for the purpose of violating the same. The facts tending to establish affiant's reason for belief and probable cause for belief are as follows: see
attached affidavit.

This affidavit and complaint is made for the purpose of authorizing the issuance of a search warrant for the person or premises described above.

Sworn to before me and subscribed in my presence this 30 day of March, 19 87.

Chuck Horton

Signature of Affiant



Robert L. Stevens

Signature and Title of Officer before whom
affidavit is made

Judge of Superior Court

GEORGIA, CLARKE COUNTY

To Chuck Horton (Name of Peace Officer
making complaint) and to all and singular
the Peace Officers of the
State of Georgia, "GREETING":

The foregoing affidavit and complaint
having been duly made before me and the
same, together with the facts submitted
under oath contained therein having
satisfied me that there is probable cause to
believe that the property described therein
is being unlawfully concealed in and upon
the premises described therein of see
attached affidavit

YOU ARE HEREBY COMMANDED to enter and
search said described premises, serving this



warrant, and if the property described or any portion of it be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within 10 days of this date or some other judicial officer, as required by law.

Given under my hand and seal this 30th day of March, 19 87.

at 2:15 O'clock p.m.

Robert L. Stevens

Signature and Title of
Officer Issuing Search
Warrant

Judge of Superior Court

Filed in office this 3rd day
of April 19 87

Karen F. Armour

(DEPUTY) CLERK OF SUPERIOR
COURT, WILKES COUNTY, GA



AFFIDAVIT FOR A TOOMBS JUDICIAL CIRCUIT
(WILKES COUNTY) SEARCH WARRANT FOR THE
ENTIRE PREMISES OF 405 SOUTH ALEXANDER
AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA
BEING A TWO STORY WHITE FRAME HOUSE, WHITE
PICKET FENCE AROUND THE HOUSE, AND GARAGE IN
THE BACK. THE HOUSE IS OCCUPIED BY ROBERT
M. "SKEET" WILLINGHAM, JR. THE VEHICLE
OWNED BY WILLINGHAM, JR. IS A 1985 BLUE
MERCEDES BENZ MODEL 190E LICENSE NUMBER
GEORGIA 1986 "BOOKS".

CONFIRMATION OF THE ABOVE WAS MADE BY
PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS
RESIDENCE, SEEING LETTERHEAD STATIONERY WITH
HIS NAME AND ADDRESS (405 SOUTH ALEXANDER,
WASHINGTON, GEORGIA), AND CHECKING HIS
FORMER EMPLOYER'S RECORDS. THE VEHICLE
DESCRIBED WAS VERIFIED AS BEING WILLINGHAM'S
AFTER CHECKING UNIVERSITY OF GEORGIA PARKING
SERVICES RECORDS. THESE THINGS WERE ALSO



CONFIRMED BY HAVING EXECUTED SEARCH WARRANTS
AT THIS RESIDENCE ON DECEMBER 22, 1986,
FEBRUARY 2, 1987, AND FEBRUARY 17, 1987.

On Monday, December 22, 1986, Monday,
February 2, 1987, and Tuesday, February 17,
1987, University of Georgia police officers
executed search warrants at 405 South
Alexander Avenue, Washington, Georgia. On
Tuesday, February 3, 1987, a consent search
was conducted at 405 South Alexander Avenue,
Washington, Georgia. 405 South Alexander
Avenue, Washington, Georgia is the home of
Robert M. "Skeet" Willingham, Jr. former
employee of the University of Georgia
Library (Special Collections).

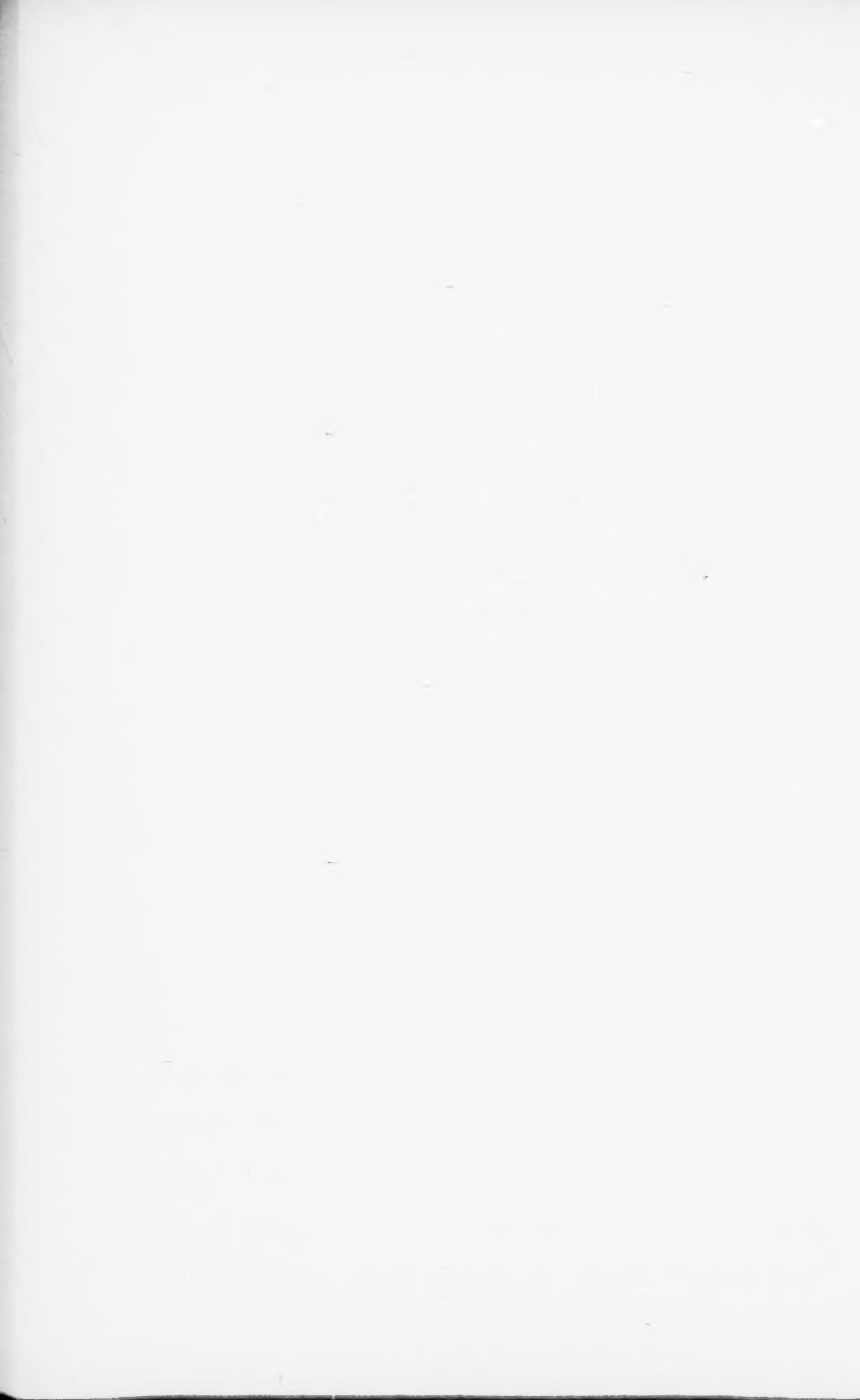
During the four (4) previous searches,
a total of seventeen (17) articles have been
taken from Willingham, Jr.'s home. Of the
seventeen (17) articles taken by University
of Georgia Police officers, seven (7) have
been positively identified as being property



belonging to the University of Georgia. The seven (7) articles identified as being University property came from the Special Collections Department.

During the execution of the second search warrant on Monday, February 2, 1987, photographs were taken by police officers. These photographs were developed and studied by library officials. On March 10, 1987, I was notified by library officials and told about three (3) items they felt should be investigated as possibly being property belonging to the University of Georgia.

The first article is the No. 1, Friday, October 13, 1826 edition of the "Hancock Advertiser". Library officials checked microfilm records and discovered by checking the photographs taken inside the home of Willingham, Jr. that their microfilm records of the October 13 edition has the identical same markings as the original "Hancock Advertiser" found in Willingham, Jr.'s home.



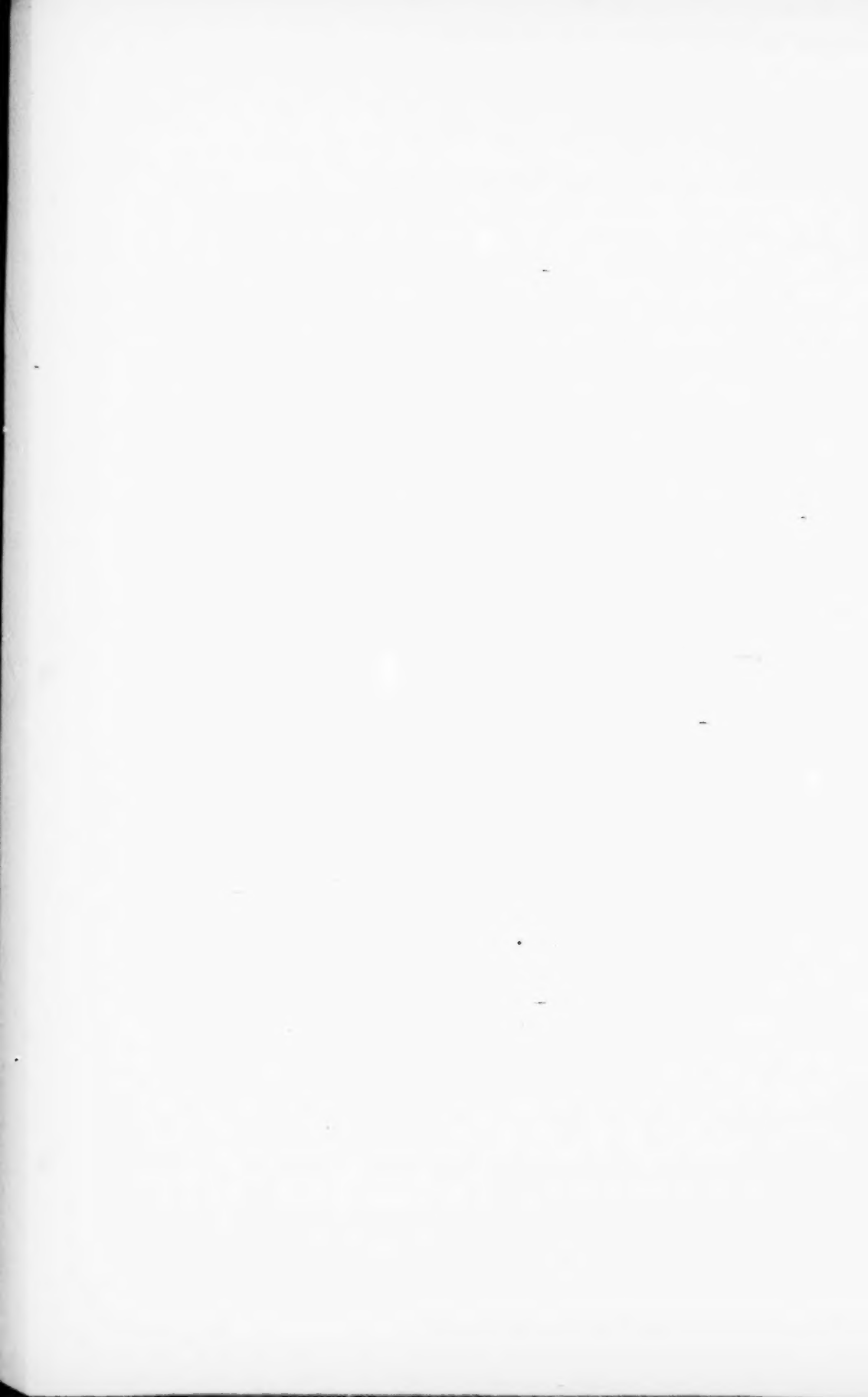
The second article is a print of "Stone Mountain, Georgia". Library officials discovered that they had obtained an identical print during the purchase of the W.W. DeRenne collection in the 1930s. It was further discovered that library officials photographed this print at some point in the past and kept a photograph on file. Upon inspection of the file copy of the print and the photograph taken of the print in Willingham, Jr.'s home, it is easily seen by the naked eye that there are marks on both photographs that are identical.

The third article is a Georgia Railroad and Banking Company Stock Certificate dated April 15, 1845. Library officials discovered the library purchased a collection of similar stock certificates from an antique dealer on April 2, 1958. The collection purchased by the library in 1968 consisted of twenty-nine (29) pieces.



Now there are but twenty-eight (28) pieces remaining. All pieces purchased were 1840 - 1843 Georgia Railroad and Banking Company stock certificates. All pieces purchased by the library have "cancelled" written on the left side. The photograph of the stock certificate taken in Willingham, Jr.'s home also has "cancelled" written on the left side. The handwriting on the University's pieces appears to be identical to the handwriting on the stock certificate photographed in Willingham, Jr.'s home.

For the above reasons, I have probable cause to believe there is now contained within the premises or vehicle or on the person of Robert M. "Skeet" Willingham, Jr. an October 13, 1826 edition of the Hancock Advertiser, a print of Stone Mountain, Georgia, and a cancelled stock certificate from the Georgia Railroad and Banking Company belonging to the University of Georgia.



Affiant Chuck Horton

Sworn to and subscribed before me this day,
March 30, 1987

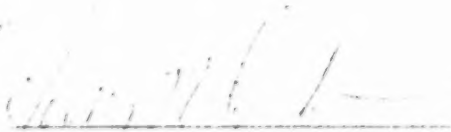
Judge Robert L. Stevens

Judge of Superior Court

CERTIFICATE OF SERVICE

I, Harry N. Gordon, hereby certify that I have served three copies of the foregoing Opposition to Petition for Writ of Certiorari on Ernie DePascale, counsel for Robert M. "Skeet" Willingham, Jr., at Forston, Bentley & Griffin, P.O. Box 1744, Athens, Georgia 30613, by depositing the same in the United States mail with proper postage affixed thereto.

This 24th day of October, 1991.



Harry N. Gordon
District Attorney